Supreme Court of the United States

OCTOBER TERM, 1966

No. 216

NATIONAL LABOR RELATIONS BOARD,
PETITIONER

vs.

ALLIS-CHALMERS MANUFACTURING COMPANY,
ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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[fol. 1]

BEFORE THE NATIONAL LABOR RELATIONS BOARD

13th Region

* * * *

TRANSCRIPT OF PROCEEDINGS—Tuesday, June 11, 1963

* * * *

[fol. 2] MR. RASKIN: Now we know and we are not naive about these matters, that where there are requirements for union membership as the condition of employment, unfortunately and that even is true where there are [fol. 3] no requirements of union membership as the condition of employment—unfortunately the great mass of workers take little interest in union affairs. This unfortunate situation probably is no different than in any other fraternal group. The attendance record at membership meetings is low. The great interest in keeping alive the union status is maintained usually by a handful of people. Therefore the imposition of a sanction such as, "You are no longer a member of this union," means nothing and is of no consequence and probably could well be a relief to some people because it wouldn't make it necessary for them even to so much as come up to a union meeting at all.

If our constitution and the constitution of the international union which is part of this record means anything and if it is intended as a guide to the conduct of its members, it can only be enforced through the processes as was done in these cases.

* * * *

[fol. 4]

TXD-52-64
Milwaukee, Wis.

BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

Case No. 13-CB-1066

LOCAL 248, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO [1]

and

ALLIS-CHALMERS MANUFACTURING COMPANY

Case No. 13-CB-1222

LOCAL 248, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO

and

ALLIS-CHALMERS MANUFACTURING COMPANY

Case No. 13-CB-1408
(Old Case No. 18-CB-177)

LOCAL 401, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURE IMPLEMENT WORKERS OF AMERICA, AFL-CIO

and

ALLIS-CHALMERS MANUFACTURING COMPANY

George Graf, Esq., and *Gerry M. Miller, Esq.*, for the General Counsel.

Raskin, Zubrensky & Padden, of Milwaukee, Wis., by *Max Raskin, Esq.*, for Respondents.

[1] The caption of the case is here corrected to reflect the full name of the International Union, which will hereinafter be referred to as UAW.

Quarles, Herriott & Clemons, of Milwaukee, Wis., by *John G. Kamps, Esq.*, and *James A. Urdan, Esq.*; *John L. Waddleton, Esq.*, and *Edward Welch, Esq.*, both of Milwaukee, Wis.; for the Charging Party.

Before *Harold X. Summers*, Trial Examiner.

TRIAL EXAMINER'S DECISION—January 31, 1964

This case was heard upon the amended complaint[2] of the General Counsel of the National Labor Relations Board, herein called the Board, alleging that Local 248, UAW, herein called Respondent 248, and Local 401, UAW, herein called Respondent 401, had engaged in and were engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the National Labor Relations Act, herein called the Act. Respondents' answer to [fol. 5] the amended complaint admitted some of its allegations and denied others; in effect, it denied the commission of any unfair labor practices. Pursuant to notice, a hearing was held before the undersigned Trial Examiner, Harold X. Summers, at Milwaukee, Wisconsin, on June 11, 1963. All parties were afforded full opportunity to examine and cross-examine witnesses, to argue orally, and to submit briefs. Briefs filed by the General Counsel, Respondents, and the Charging Party, and a "reply brief" filed by Respondents, have been fully considered.

Upon the entire record in the case,[3] I make the following:

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[2] The original charge in Case No. 13-CB-1066 was filed on May 31, 1961; in 13-CB-1222, on May 22, 1962; and in 13-CB-1408 (then numbered 18-CB-177) on May 22, 1962. An order of consolidation of 13-CB-1222 and 13-CB-1408, a complaint, and a notice of hearing were issued on April 12, 1963; and an order of further consolidation of all three cases, an amended complaint, and a new notice of hearing were issued on May 15, 1963.

[3] On September 13, 1963, I issued an order to show cause why the transcript should not be corrected in specified respects. No good cause to the contrary having been shown, the corrections indicated in the order to show cause, which is received in evidence as Trial Examiner's Exhibit 1, are hereby ordered made.

Findings of Fact[4]

I. Commerce

The Charging Party, Allis-Chalmers Manufacturing Company, herein called the Employer, is a Delaware corporation, with its principal office and place of business at West Allis, Wisconsin. Engaged in the manufacture, sale and distribution of basic industrial equipment, farm and construction machinery, electrical equipment, food processing machinery, and related products, it operates plants and facilities in the States of Alabama, California, Illinois, Indiana, Iowa, Massachusetts, Missouri, Ohio, Pennsylvania, and Wisconsin, among them plants at West Allis and La Crosse, Wisconsin (hereinafter called the West Allis Works and the La Crosse Works, respectively).

During each of the calendar years 1961 and 1962, representative periods, the Employer, in the course and conduct of its business operations at the West Allis Works and the La Crosse Works, purchased and received directly from points outside the State of Wisconsin supplies and materials valued at in excess of $500,000; and sold and shipped directly to points outside the State of Wisconsin finished products valued at in excess of $500,000.

The Employer is an employer engaged in commerce within the meaning of the Act.

II. The Unions

Respondent 248 and Respondent 401 are labor organizations within the meaning of the Act.

III. The alleged unfair labor practices

A. *Background and chronology of events*

At all times material herein, Respondent 248 and Respondent 401 have been the exclusive bargaining representatives of appropriate bargaining units—composed,

[4] No witnesses were offered. All testimony was presented in the form of stipulations by the parties, supported or explained by documentary material. The findings recited herein, therefore, are based upon the pleadings and the stipulations.

generally speaking, of nonsupervisory production and maintenance employees—at the West Allis Works and La Crosse Works respectively. The working conditions of each unit have been governed by separate collective-bargaining contracts between the Employer and the respective bargaining representatives, which contracts have contained union-shop clauses. For the purposes of this case, it has been stipulated and I find, that all employees [fol. 6] who had completed their periods of probation were members of Respondent 248 or Respondent 401, whichever was appropriate.[5]

At the termination of the 1955-58 contract at the West Allis Works, Respondent 248 engaged in an economic strike in support of new contract demands, which strike lasted from February 2 through April 20, 1959. During the strike, the Employer attempted to operate the plant, and approximately 175 employees—of a unit of 7,400—worked on one or more days during the strike despite the presence of the picket line.

On or about February 24, 1959, Respondent 248 sent a letter to each member who, according to its information, had crossed the picket line to work at the West Allis plant, calling his attention to the fact that his action was in violation of the Constitution and Bylaws of the UAW and the Local, constituted conduct unbecoming a union member, and subjected him to a fine of up to $100 for each such day's activity; and it expressed the hope that the addressee would desist from the conduct complained of. Between February 2 and June 30, 1959, formal charges were filed with Respondent 248 against those who had worked during the strike, alleging that, by their actions, they had engaged in conduct unbecoming a union member, in violation of the UAW Constitution. Due notice having been served upon the charged members, hearings on the charges were conducted by Trial Committees between July 7 and August 19, 1959.[6] Reports by the Trial Com-

[5] In the absence of any contentions to the contrary, I find that all relevant union-security provisions were lawful.

[6] One hundred fifty-five of the accused were tried by one Trial Committee, 17 by another. Apparently, only eight appeared in person, but all were represented by legal counsel.

mittees, finding 172 [1] members guilty of conduct unbecoming a union member and assessing fines of from $20 to $100, were approved by the Local membership on September 19, 1959. By letter dated September 18, 1959, Respondent 248 made a demand upon each fined member for payment of his fine; on October 6, 1960, it reminded each fined member of the obligation, notified him of the outcome of a Wisconsin Supreme Court case on the subject of union fines, and again asked for payment; on April 21, 1961, it notified each fined member of the action of the United States Supreme Court with respect to the Wisconsin case above mentioned and warned that a continued failure to pay the fine owed would result in the case being turned over to counsel "for civil suit."

Meanwhile, a similar situation existed at the LaCrosse Works. Respondent 401, the bargaining agent there, engaged in an economic strike over the terms of a new collective-bargaining contract from February 2 to April 19, 1959. Here again, certain union members, two in number, chose to cross the picket line and to work for the Employer during the course of the strike. They too were charged with conduct unbecoming a union member, given a hearing before a Trial Committee, and, pursuant to an approval of the Committee report by the Local membership on July 11, 1959, were fined $100 each.

Respondents subsequently took steps toward collection of the fines by court action. On or about August 29, 1961, Respondent 248 took a "pilot case" to court. It filed suit in Milwaukee County Court, Civil Division, against Benjamin Natzke, one of those at West Allis who had been fined $100. The case came up for hearing in October 1962, and, on April 26 1963, the trial court found for the plaintiff. Notice of appeal to the Circuit Court, Milwaukee County, was filed, which appeal, at the time of this hearing, was pending. Likewise, on or about May 15, 1962, Respondent 401 filed suit against the two LaCrosse employees who had been fined. One of the suits

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[1] A summary list of fined members attached to a written stipulation contains the names of *173* persons. The variance is immaterial in this matter.

was dropped less than a month later, but the other was still pending at the time of this hearing.[8]

[fol. 7] Meanwhile, history repeated itself in connection with negotiations for new contracts early in 1962. Once again, Respondent 248 engaged in an economic strike, lasting from February 26 to March 4, 1962; once again, a number of employee-members—this time, approximately 30 of the 5,500 then employed in the West Allis unit—worked on one or more days during the strike; once again, beginning on April 11, 1962, there were "warning" letters, the filing of charges of conduct unbecoming a union member, a trial,[9] and—pursuant to a Local membership vote on August 5, 1962—the assessment of fines against 29 members, 6 of whom had been fined in 1959.[10] At the LaCrosse Works, there was a strike from February 26 to March 5, 1962; four members—out of 625—crossed the picket line; charges were filed during the month of March; and the report of the Trial Committee, fining each of the four $100, was approved by the Local membership on June 7, 1962.

As of the date of this hearing, 20 of the members fined by Respondent 248 had paid all or part of the fines assessed against them; the rest, plus all 6 members fined by Respondent 401, had made no payments.

During the entire relevant period, the members who were fined in either 1959 or 1962 continued to be employed by the Employer in one or the other of the bargaining units involved herein; neither Respondent made demands on the Employer to discharge or otherwise to affect the employment status of any of them. None of them has been dropped from membership in one or the

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[8] Reasons are unspecified herein.

[9] Eight accused members appeared in person. Two of the eight represented themselves; the rest, including those who did not appear, were represented by legal counsel.

[10] In addition, the charges against one person were dismissed for lack of proof; those against two were "stricken" because the two were not union members. The 29 were fined from $35 to $100 each; with respect to 6 of these, there were provisions for remission of part or all of the fines conditioned upon certain required attendance at future local meetings.

other of Respondent Locals, and none of them has resigned or otherwise terminated his union membership except, perhaps, in connection with a termination of employment or for other reasons irrelevant hereto.

B. *Discussion and conclusions*

The amended complaint alleges that Respondents' actions in imposing fines upon employees because they worked for the Employer during the 1959 and 1962 strikes, in demanding payment of such fines, and in threatening the institution of and instituting civil proceedings for the collection thereof constituted violations of Section 8(b)(1)(A) of the Act.[11] Respondents deny that their conduct is violative of the section.[12]

[fol. 8] Section 8(b)(1)(A) provides:

> It shall be an unfair labor practice for a labor organization or its agents . . . to restrain or coerce . . . employees in the exercise of their rights guaranteed in Section 7, provided, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

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[11] With respect to Respondent 401, the allegations of the complaint were confined to developments arising out of the 1962 strike only.

[12] Respondents, in argument and briefs, interpose a number of defenses above and beyond the merits of the case: (1) Because of procedural delays herein, the General Counsel is barred by laches from proceeding on Charge No. 13-CB-1066; (2) proceedings with respect to any conduct arising out of the 1959 strike are barred by the 6-month limitation contained in Section 10(c); and (3) the Board should not proceed in view of provisions in the contracts creating a collective-bargaining forum for disposing of these matters. These defenses are *rejected*; (1) Laches does not apply against the United States Government (*W. C. Nabors d/b/a W. C. Nabors Company*, 134 NLRB 1078, 1079, enf. —— F. 2d —— (C.A. 5, 1963)); (2) where, as here, implementing action is taken within the 6-month period, Section 10(c) does not bar the proceeding (cf. *Bryan Manufacturing Company*, 362 U.S. 411); and (3) the Board's authority to remedy unfair labor practices is paramount to other available means of adjustment (see Section 10(a) of the Act).

In the recently-issued *Wisconsin Motor* case,[13] the Board comprehensively discussed the applicability of Section 8(b)(1)(A) to the imposition of union fines on members for infraction of union rules. The Board concluded that, even if the reach of 8(b)(1)(A) might—as contended by General Counsel in that case[14]—conceivably go beyond "union organizational tactics tinged with violence, duress, or reprisal,"[15] it was "nonetheless evident that internal union disciplines were not among the restraints intended to be encompassed by the Section." Thereupon, a Board majority approved the Trial Examiner's determination that the actions complained of in the case—a union's assessment of fines against members who had violated a union rule relating to "ceilings" on production for an employer and its institution of lawsuits to recover the amounts of such fines—were not the kinds of activity with which Section 8(b)(1)(A) is concerned. I am convinced, and I find, that there is no relevant difference between a union's action directed against members who violate a union rule against crossing their own picket line and action directed against members who produce more than a specified amount; if anything, it would appear that the former is more justified than the latter.

Furthermore, in the *Wisconsin Motor* case above referred to, the Board noted that, even if the acts there complained of were the type of restraint or coercion within the ambit of the section, they were protected by its proviso. In the Board's view, the allusion to "rules with respect to the acquisition or retention of membership" should not be so narrowly construed as to permit a union to expel a member for violation of a union bylaw but not to fine him for the same infraction without expelling him, or to enforce payment of a fine by expulsion but not

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[13] *Local 283, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO (Wisconsin Motor Corporation)*, 145 NLRB No. 109, decided January 17, 1964.

[14] Citing *International Ladies' Garment Workers' Union* v. *N.L.R.B. (Bernhard-Altman)*, 366 U.S. 731, 738.

[15] Quoted from *N.L.R.B.* v. *Drivers, Chauffeurs, and Helpers, Local 639 (Curtis Brothers)*, 362 U.S. 279, 286.

by a suit for collection. Whatever the views of others,[16] the history of the passage of Section 8(b)(1)(A) demonstrated to the Board that Congress was more concerned with placing restrictions on a union's right to expel than to fine members.

Finally (in the same decision), the Board took note that Congress, aware of the Board's treatment of Section 8(b)(1)(A) vis-a-vis unions' internal affairs, did not thereafter indicate that a broader interpretation was intended or desired. Rather, in 1959, it enacted a fairly comprehensive code governing certain of the internal affairs of labor organizations, jurisdiction to enforce which was placed with the Federal Courts, not the Board.

[fol. 9] The instant situation is governed by the *Wisconsin Motor* case. Its only distinction—there, the fine was for exceeding production ceilings; here, it was for crossing a union-authorized picket line—is one without a difference. Both cases involve the infraction of an internal union rule; in both cases, the union rule "relates to" a condition of employment; in neither case is there an attempt to bring about a termination of an employment relationship. In this connection, the General Counsel and Employer urge that *employment* was here involved, and that, therefore, the matter goes beyond "internal union affairs." A like argument was made in *Wisconsin Motor* by the dissenting Board Member; the answer is that given therein by the majority:

> Our dissenting colleague argues forcefully that the proviso to Section 8(b)(1)(A) permits the imposition of union rules on employees as *union members*, but does not apply to the enforcement of rules against employees as *employees*. Proceeding from this premise, the dissenting opinion then finds that the subjects of production and wages are "matter clearly related to *employment*, and not to *membership* . . . ." But the conclusion does not follow the distinction. Obviously, production and wages are related to jobs.

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[16] Respondents herein, it is urged by the General Counsel and Employer, regarded the imposition and collection of fines as a more potent weapon than expulsion.

Jobs are related to employees and employees may, if they so desire, be union members. A union rule that a *member* is subject to a fine if he exceeds a production ceiling does not mean that he is subject to such a fine as an *employee*. Nor does it mean that his employment status is affected so long as the Union does not attempt to exact payment of the fine by pressure on his employer or discrimination in his job opportunities.

It should not need saying that unions exist for the purpose of collective bargaining with respect to wages, hours, and conditions of employment. Necessarily, their constitutions reflect this basic purpose. In a sense, virtually all union rules affect a union member's employment.

But the Board has not been empowered by Congress to police a union decision that a member is or is not in good standing or to pass judgment on the penalties a union may impose on a member so long as the penalty does not impair the member's status as an employee. Our dissenting colleague's view would require the Board to sit in judgment on union standards of conduct for its members even though such standards are not enforced by threats affecting the member's job tenure or job opportunities. Whether or not the Union's rule in this case is desirable or equitable is a matter we need not and do not decide. It is sufficient, in our view, that the Union deliberately restricted the enforcement of its rule to an area involving the status of a member as a *member* rather than as an *employee*.

I find, in short, that the General Counsel has failed to demonstrate by a preponderance of the evidence (1) that Respondents restrained or coerced employees in the exercis of their rights guaranteed in Section 7 within the meaning of Section 8(b)(1)(A), and (2) assuming, without finding, that such restraint or coercion existed, that they were not protected in their right to prescribe their own internal rules.

Upon the basis of the foregoing factual findings and conclusions, I come to the following:

Conclusions of Law

1. Respondent 248 and Respondent 401 are labor organizations within the meaning of Section 2(5) of the Act.

[fol. 10] 2. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. Neither Respondent 248 nor Respondent 401 has engaged in or is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record of the case, I recommend that the amended complaint be dismissed in its entirety.

Dated at Washington, D. C. Jan 31 1964

/s/ Harold X. Summers
Trial Examiner

[fol. 11]
149 NLRB No. 10

D-6138
Milwaukee, Wisconsin

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 30-CB-1
(Old Case No. 13-CB-1066)

LOCAL 248, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO

and

ALLIS-CHALMERS MANUFACTURING COMPANY

Case No. 30-CB-4
(Old Case No. 13-CB-1222)

LOCAL 248, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO

and

ALLIS-CHALMERS MANUFACTURING COMPANY

Case No. 30-CB-5
(Old Case No. 13-CB-1408)

LOCAL 401, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO

and

ALLIS-CHALMERS MANUFACTURING COMPANY

DECISION AND ORDER—October 23, 1964

On January 31, 1964, Trial Examiner Harold X. Summers issued his Decision in the above case, finding that the Respondents had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed, as set forth in his Decision attached hereto. Thereafter, the Respondents and the Charging Party filed exceptions to the Trial Examiner's Deci-

sion and supporting briefs. At the request of the Charging Party, the Board granted oral argument herein by Notice of Hearing dated June 9, 1964. The hearing was held on July 9, 1964, and all parties participated in the argument. In addition, counsel for the American Federation of Labor and Congress of Industrial Organizations participated in the argument and filed a brief as *amicus curiae* and counsel for the National Association of Manufacturers filed a brief as *amicus curiae*.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Decision and the entire record in this case, including the exceptions and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[fol. 12] Each Respondent is a local of the United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO, and, for a number of years, has represented production and maintenance employees of the Allis-Chalmers Manufacturing Company, hereinafter referred to as the Employer. Local 248 has been the representative at West Allis, Wisconsin, and Local 401 has had such status at LaCrosse, Wisconsin. From February 2 to approximately April 20, 1959, both Respondents conducted economic strikes against the Employer in support of new contract demands. At the West Allis Works, approximately 175—out of a unit of 7400—crossed the picket line and worked during the strike. At the LaCrosse Works, 2 employees crossed the picket line to work.

Each Respondent then began internal union proceedings against those members who had crossed the picket lines, charging them with violation of the International Constitution and By-Laws. These proceedings resulted in the imposition of fines ranging from $20 to $100 against 174 members. The Respondent began a "test case" in the state courts to collect the fines imposed on one member. Judgment in the trial court was for the Respondent and an appeal from this judgment was pending at the time of the hearing herein.

In 1962, each Respondent again called an economic strike against the Employer in support of new contract

demands. The 1962 strikes lasted from February 26 to approximately March 5. Once again, some members of the Respondents crossed the picket lines and worked—30 out of 5500 at West Allis and 4 out of 625 at LaCrosse. Again, after internal union proceedings, fines were imposed.

As of the date of the instant hearing, 20 of the members had paid the fines in whole or in part, while the rest of the fined members had made no payments. No effort was made by the Respondents to affect the employment status of any of the fined members and they continued to be employed by the Employer throughout the period of the dispute. Nor was any effort made by the Respondents to terminate the union membership of any of the fined employees.

[fol. 13] The complaint, as amended, alleged that the Respondents, by imposing fines on members because they worked during the 1959 and 1962 strikes, by demanding payment of such fines, and by threatening to and instituting court proceedings to collect such fines, violated Section 8(b)(1)(A) of the Act. The Trial Examiner recommended dismissal of the complaint on the ground that the instant case is governed by *Wisconsin Motor Corporation.*[1] We agree.

In the *Wisconsin Motor* case, a union fined members who had exceeded production ceilings set by a union rule which was designed to limit incentive earnings. The Board found that such fine was protected by the proviso to Section 8(b)(1)(A) of the Act, which states:

> [T]his paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

We pointed out there, after a review of the cases and the legislative history of the Section, that ". . . the Union deliberately restricted the enforcement of its rule to an area involving the status of a member as a *member* rather

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[1] 145 NLRB No. 109 (Member Jenkins concurring, Member Leedom dissenting).

than as an employee," and that it was thus complying with the requirements of the proviso.

Here, too, the Respondents have properly maintained the distinction between treatment of the individual as a member of the Union and treatment of him as an employee. They have imposed the fine only on their own members. It is not alleged that the Respondents ever attempted to affect the jobs or working conditions of any of the fined individuals. Nor is it alleged that the rule prohibiting members from crossing a picket line during a strike is not the legitimate concern of a union or properly the subject matter of internal discipline. It may be said then that the Respondents were engaged only in prescribing and enforcing their own rules with respect to the acquisition or retention of membership. Since, under the proviso, Section 8(b)(1)(A) does not impair the right of a labor organization to do this, it follows that the Respondents did not violate that Section.

[fol. 14] In reaching this conclusion, we do not deny that imposition of a fine by a union may, under certain circumstances, constitute the sort of restraint and coercion which is forbidden by Section 8(b)(1)(A). Thus, in our recent *Skura* and *Wellman-Lord* decisions,[2] we found violations where a union imposed fines on members because of their having filed charges with the Board before exhausting internal union remedies. However, as we were careful to point out in those cases, the rules involved there were beyond the competence of the union to enforce since they interfered with the right of union members to seek redress with the Board through the filing of charges. In Member Leedom's dissent, he argues that it is beyond the competence of a union to promulgate and enforce a rule prohibiting members from crossing a picket line. We cannot conceive of a subject which would be more within its competence, since it involves the loyalty of its members during a time of crisis for the union. The Act does not deprive a union of all recourse against those of

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[2] *Local 138, International Union of Operating Engineers, AFL-CIO (Charles S. Skura)*, 148 NLRB No. 74; *Local No. 975, International Union of Operating Engineers (Wellman-Lord Engineering, Inc.)*, 148 NLRB No. 81.

its own members who undermine a strike in which it is engaged. When the strike is lawful and the picket line is lawful, we cannot hold that a union must take no steps to preserve its own integrity. This is a far cry from the above-mentioned *Skura* and *Wellman-Lord* cases, where the union's conduct interfered with the members' utilization of Board processes and thereby hindered effective enforcement of the Act.

With respect to Member Leedom's further argument that the union rule here impinges on "employment" and is therefore not protected by the proviso to Section 8(b)(1)(A), we stated in *Wisconsin Motor*, and we recognize again here, that "In a sense, virtually all union rules affect a member's employment relationship." The question is whether, in *enforcing* the rule, the union goes outside the area of union-member relationship and enters the area of employer-employee relationship. We think it clear that the Respondents did not do so in this case.

[fol. 15] Furthermore, the Board long ago held in the *Minneapolis Star and Tribune* case [3] that a union did not violate Section 8(b)(1)(A) by fining a member who did not perform picket duty during a strike. The facts herein are analogous. Accordingly, as no reason appears to us, and as our dissenting colleague has not indicated reasons why *Minneapolis Star* should be overruled, we reaffirm the conclusion in that case that the Respondents have not violated Section 8(b)(1)(A) of the Act.

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[3] *Minneapolis Star and Tribune Co.*, 109 NLRB 727.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed.

Dated, Washington, D. C. Oct 23 1964

.....

FRANK W. MCCULLOCH, Chairman

.....

JOHN H. FANNING, Member

.....

GERALD A. BROWN, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

[fol. 16]

MEMBER JENKINS, CONCURRING:

Union competency to adopt internal rules is not in issue. The issue before us centers on whether union action, concededly coercive, has impinged on rights guaranteed employees under Section 7 of the Act. The resolution of this issue does not turn on whether the union rule impinges on "employment" as urged by the dissent. Neither, in my view, does it turn on whether the union enforcing action invades the employer—employee relationship, as urged by the majority. The central question appears to me to be whether the Act seeks to regulate the right of a union to discipline its members for refusing to respect a picket line lawfully erected by the union.

Certain it is that Section 7 assures to each employee the right to refrain from engaging in any concerted activities with which he is in disagreement. Neither Section 7 nor any other provision of the Act, however, grants assurance that the employee thus choosing to refrain shall be relieved of duties and obligations undertaken as a consequence of his acquisition or retention of membership in a labor organization.

As I pointed out in the concurring opinion in *Wisconsin Motor Corporation*,[4] alternative choices must often be made by employees seeking to exercise rights conferred on them by Section 7. Just as the First Amendment to the United States Constitution protects the right to speak, but does not insulate the speaker against all consequences of having exercised the freedom of speech, in like fashion the Act, as I read it, protects the right of an employee to choose either to support a lawful picket line or to refuse to do so, but does not insulate the employee from all consequences flowing from his choice.

[fol. 17] Here, at the time the employee makes his choice, he is on notice (by virtue of the existence of a published union rule which he as a member of the union has obligated himself to observe) that his exercise of the statutory right to violate his union's picket line may sub-

[4] 145 NLRB No. 109.

ject him to consequential discipline by the union. It must be remembered that the same statutory language relied upon to protect the right of the individual employee to refrain also protects the right of the group of employees to engage in the concerted activity here involved. Therefore without reference to the proviso to 8(b)(1)(A) it would follow that where a group of employees in furtherance of their Section 7 rights form a union and provide as one of the rules governing membership therein that all members must, on pain of specified disciplinary action, refrain from working behind a statutorily permitted picket line of the union, the specified disciplinary action may be taken by the union without offending Section 8(b)(1)(A) unless the disciplinary action itself violates some other section of the statute or is at odds with the public policies which the statute is designed to implement.

All that is added to the equation by the proviso language is the Congressional assurance that Section 8(b)(1)(A) is not intended to strip unions of the pre-existing right to formulate eligibility requirements for union membership and rules governing the conduct of union members.

In summary, I am persuaded that it would be a statutory anomaly to conclude from reading Section 7 and Section 8(b)(1)(A)—with or without the proviso—that all union action which restrains or coerces an employee violates 8(b)(1)(A) even though it is action not otherwise proscribed (and indeed may be authorized) by the Act, [fol. 18] and is a necessary adjunct or corollary to the preservation of solidarity inherent in the "mutual aid or protection" protected by Section 7.[5]

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[5] This apparently was the view of Senator Taft in the debates leading to adoption of 8(b)(1)(A). He observed that the acceptable (to him) alternatives were "either an open shop or an open union" and that 8(b)(1)(A) "decreed an open union." He stated that the section permits a union to expel a member for whatever reason seems valid to it, and prohibits only an attempt by the union to have the employer discharge the employee or otherwise act against him. 93 Cong. Rec. 5088. If a union must (as the Act requires) admit to membership employees who tender dues and initiation fees, or forego the right under 8(a)(3) to limit employment to members, it would seem that the right to engage in "concerted"

For the reasons stated herein, I join the majority in dismissing the complaint herein.

Dated, Washington, D. C. Oct 23 1964

HOWARD JENKINS, JR., Member

NATIONAL LABOR RELATIONS BOARD

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activity would almost necessarily include the power to discipline the membership toward maintaining the "concert."

[fol. 19]

MEMBER LEEDOM, DISSENTING:

Unlike my colleagues and essentially for the reasons indicated in my dissent in *Wisconsin Motor, supra,* footnote 1, I would find that the Respondent Union violated Section 8(b)(1)(A) by imposing a fine on its members for violating its rule against crossing a Union picket line. In that case, it was my view that the imposition of fines for exceeding union-imposed production quotas fell within the ambit of Section 8(b)(1)(A) and, further, that the proviso to that section was inapplicable because the union rule, instead of relating to the acquisition and retention of membership, affected members in their employment relationship. The violation seems more patent here. Thus, the rule itself contravenes a right guaranteed by Section 7 of the Act, namely, the right to refrain from engaging in concerted activities, including strike activity. Further, the impact on the employment relationship is greater here since the imposition of the fine for disregarding the rule was calculated to preclude entirely, rather than partly, the gainful employment of members who were willing to work.

I find my colleagues' position herein difficult to understand in light of the views they expressed in the *Skura* case,[6] which was decided after the *Wisconsin Motor* case. In *Skura,* they said that a rule requiring a member to exhaust his internal union remedies before filing charges with the Board is not ". . . within the competence of the union to adopt and enforce." They held, therefore, that imposition of a fine on a union member for violation of that rule constituted restraint and coercion in violation of Section 8(b)(1)(A) and that such conduct is not immunized from our processes by the proviso to that Section.
[fol. 20] If, as the Board has found, there was a violation in *Skura* then, surely it seems to me, there is a violation here. Just as in *Skura,* it is here beyond the competence of a union to promulgate and, by coercive means, to enforce a rule prohibiting members from crossing a

[6] *Supra,* footnote 2. I concurred in that case, separately.

picket line, as the right to cross a picket line is encompassed by the guaranteed right to refrain from engaging in union or concerted activities. To hold otherwise is to permit a union to deprive employees of a right guaranteed to them by the Act—the very thing the Board frowned upon in *Skura*.

Yet, my colleagues of the majority revert again to the reasoning of the *Wisconsin Motor* case and find no violation because, in their view, the fined individuals are affected only in their status as members and not as employees. I think it will come as a surprise to the affected individual when he is told that a union fine designed to induce him to respect picket lines and stay away from his job does not touch him as an employee, but only as a union member. One of the indispensable factors in any employment relationship is the employee's willingness to come to work. It seems undeniable that such willingness is impeded by any penalty imposed because of it. Therefore, just as I could not agree that the production quotas or earnings ceilings which were involved in *Wisconsin Motor* did not concern "employment," I cannot agree here that the question of crossing a picket line does not concern "employment."

As we are all agreed that the imposition of fines constitutes a form of coercion, and as there should be no disagreement with the proposition, stated above, that the right to cross a picket line is protected by Section 7 of the Act, it follows that imposition of a fine for the purpose of coercing employees to refrain from crossing a picket line violates Section 8(b)(1)(A). The fact that the Union has adopted a rule on this matter cannot insulate unlawful conduct here, any more than it could in *Skura*. By their decision here, as well as their decision in *Wis-*
[fol. 21] *consin Motor*, my colleagues seem to say that some protected activities are not protected from the coercion of a Union fine.[7] I see no warrant for distinguishing

[7] In its brief and in oral argument before the Board, the AFL-CIO, as *amicus curiae*, argues in substance that union disciplinary proceedings, including fines, are not regulated as such by the National Labor Relations Act but rather by the Landrum-Griffin Act and by state law. I concur in this position insofar as it implies

in this respect between various kinds of protected activities, and I must therefore dissent.[8]

Dated, Washington, D. C. Oct 23 1964

BOYD LEEDOM, Member

NATIONAL LABOR RELATIONS BOARD

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that there should be a single rule for union fines infringing upon protected activities, i.e., they are either all unfair labor practices or are all outside the ambit of the Act. In this connection, I think it significant that the majority, by distinguishing between the fines involved in *Skura* and *Wellman-Lord* on the one hand, and the fines in *Wisconsin Motor* and this case on the other, has rejected the clear implications of this argument by *amicus*. However, I disagree with *amicus* that the fact that union fines may be unlawful under other statutory enactments deprives the Board of authority to find that such fines are unfair labor practices. Thus, to take an obvious example, union violence on a picket line may give rise to state civil and criminal proceedings, and yet, it is well-established that such conduct is also an unfair labor practice under Section 8(b)(1)(A).

[8] *Minneapolis Star and Tribune Co.*, 109 NLRB 727, relied on by the majority, is in my opinion of doubtful precedential value. I did not participate therein, nor have I ever subscribed to the principle stated therein. In that case the Trial Examiner rather summarily rejected the General Counsel's contention that the imposition of a fine violated Section 8(b)(1)(A), and the Board was equally summary in affirming him, citing only *International Typographical Union et al. (American Newspaper Publishers Assoc.)*, 86 NLRB 951, 955-7. That cited case, however, despite some broad language, dealt *only* with the right of a union to threaten expulsion, and was decided on the ground that in view of the proviso such a threat could not be considered as "coercion." In my opinion the *Wisconsin Motor* case is the first case in which the Board has *fully* considered the applicability of the proviso to union fines. As I stated in *Wisconsin Motor* and reiterate here, I think it was wrongly decided.

[fol. 22] GENERAL COUNSEL'S EXHIBIT 2

June 11, 1963

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTEENTH REGION

Case No. 13-CB-1066

LOCAL 248, UAW, AFL-CIO

and

ALLIS-CHALMERS MANUFACTURING COMPANY

Case No. 13-CB-1222

LOCAL 248, UAW, AFL-CIO

and

ALLIS-CHALMERS MANUFACTURING COMPANY

(Old Case Number)
18-CB-177

(New Case Number)
13-CB-1408

LOCAL 401, UAW, AFL-CIO

and

ALLIS-CHALMERS MANUFACTURING COMPANY

STIPULATION OF FACTS

IT IS HEREBY STIPULATED AND AGREED by and between Respondents Local 248, UAW, AFL-CIO (hereafter called Local 248) and Local 401, UAW, AFL-CIO (hereafter called Local 401), Charging Party Allis-Chalmers Manufacturing Company (hereafter called the Company) and counsel for the General Counsel of the National Labor Relations Board that the following mat-

ters may be taken as fact in the above-captioned proceeding.

1. Local 248 and Local 401 are both labor organizations affiliated with and chartered by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, AFL-CIO (here- [fol. 23] after called the International Union). At all times material hereto Local 248 has been the collective bargaining representative, certified under the provisions of Section 9 of the Act, of production and maintenance employees working at the West Allis Works of the Company. At all times material hereto, Local 401 has been the collective bargaining representative, certified under the provisions of Section 9 of the Act, of production and maintenance employees working at the LaCrosse Works of the Company. Other than as described above, neither Local 248 nor Local 401 represents any other employees in collective bargaining.

Events at the West Allis Works

2. In June 1958 collective bargaining negotiations commenced between the Company, the International Union and various UAW local unions, including Local 248. The collective bargaining agreement then in effect between the Company and Local 248, attached hereto as Document # 1 and incorporated by reference, contained an expiration date of August 15, 1958. Article II of this agreement, and of the subsequent 1959 agreement attached hereto as Document # 1(A) and incorporated by reference, contains union security provisions. For the purposes of this proceeding only, it is admitted that, pursuant thereto, all non-probationary employees in the bargaining unit at the West Allis Works of the Company have been members of Local 248 at all times hereinafter mentioned.

3. On August 15, 1958, the collective bargaining agreement attached as Document # 1 was extended indefinitely by the parties thereto with a right of either to terminate the agreement upon seven (7) days' notice to the other. In January, 1959, Local 248 gave notice to the Company [fol. 24] terminating said agreement effective February

2, 1959, at 11:00 A.M. On February 2, 1959, Local 248 began an economic strike in support of its bargaining demands at the West Allis Works of the Company and on that date commenced picketing said premises with placards stating "ON STRIKE." Most of the West Allis Works bargaining unit employees who were then at work joined in the strike and left the premises. Others worked for one or more days thereafter. At all times from February 2, 1959, through out the strike, which ended April 20, 1959, the Company's shops and offices remained open during regular working hours and work was available for any employee who chose to refrain from participating in the strike, all in accordance with the Company's stated policy expressed in a letter issued by the Company to employees on February 2, 1959, attached hereto as Document # 2 and incorporated by reference.

4. During the course of the 1959 strike at the West Allis Works, approximately 175 bargaining unit employees worked on one or more days. In excess of 7200 of the 7400 employees working in the bargaining unit on February 2, 1959, joined the strike and did not work. The Company hired no replacements for the striking employees. On April 20, 1959, the Company and Local 248 executed a new collective bargaining agreement, a copy of which is attached hereto as Document # 1(A) and incorporated by reference.

5. The effective International Union Constitutions in the periods April 1957 to October 1959, and October 1959 to May 1962 are attached hereto as Documents # 3 and # 4 respectively and both are incorporated by reference. On or about February 24, 1959, Local 248 directed copies of the letter attached hereto as Document # 5 and incorporated by reference to members who had crossed picket [fol. 25] lines and worked during the strike. During the period February 2 through June 30, 1959, charges were filed with Local 248, of which attached Document # 6 is representative, against members who crossed the picket line and worked during the strike. On or about May 5, 1959, Local 248 directed copies of the letter attached hereto as Document # 7 and incorporated by reference to all members against whom such charges were brought.

On or about June 18, 1959, Local 248 directed copies of the letter attached hereto as Document # 8 and incorporated by reference to all members against whom such charges were brought.

6. Local 248 Trial Committee hearings upon such charges commenced on July 7, 1959. In accordance with Article 30 of the International Union Constitution, Trial Committee reports, attached hereto as Documents # 9 and # 10 and incorporated by reference, were prepared and adopted without change by majority vote of those present at a membership meeting on September 12, 1959. The trial proceedings resulted in each charged member being found guilty of "conduct unbecoming a Union member," and each such member was fined therefor in an amount up to $100. A list of the names of the members fined and the amounts of said fines is attached hereto as Document # 11 and incorporated by reference.

7. On or about September 18, 1959, Local 248 directed copies of the letter attached as Document # 12 and incorporated by reference to all members named on Document # 11. On or about October 6, 1960, Local 248 directed copies of the letter attached as Document # 13 to all of the same members.

8. On or about April 21, 1961, Local 248 directed copies of the letter attached as Document # 14 to all of the members named on Document # 11. On or about August 29, 1961, Local 248 commenced suit in Milwaukee [fol. 26] County Court, Civil Division, against Benjamin Natzke, for collection of the fine specified on Document # 11. A copy of the Summons, Complaint, and response to the Motion to Make Complaint More Definite and Certain in that case are attached hereto as Document # 15 (A), (B) and (C), respectively, and incorporated by reference. The *Natzke* case came on for hearing in October, 1962. The transcript of testimony therein is attached as Document # 16 and shall be considered for all purposes as if such testimony had been given in the instant proceeding. Those exhibits in the *Natzke* record that are elsewhere made a part of this Stipulation of Facts are not attached to Document # 16. On April 26, 1963, the trial court found for the plaintiff Local 248, rendering an

opinion attached hereto as Document # 17 and incorporated by reference. A notice of appeal to the Circuit Court, Milwaukee County, has been filed by defendant Natzke in said matter.

9. On November 1, 1961, the Company and Local 248 extended indefinitely their collective bargaining agreement (Document # 1(A)) with the right of either party to terminate upon seven (7) days' notice to the other. On February 19, 1962, Local 248 gave notice to the Company terminating the agreement effective midnight, February 26, 1962. On February 26, 1962, Local 248 began an economic strike in support of its bargaining demands at the West Allis Works of the Company and at midnight commenced picketing said premises with placards stating "ON STRIKE." Most of the West Allis Works employees in the bargaining unit who were then at work joined in the strike and left the premises. Others worked during one or more days thereafter. At all times from February 26, 1962, throughout the strike, which ended March 4, 1962, the West Allis Works shops and offices remained [fol. 27] open and work was available for any employee who chose to refrain from participating in the strike, all in accordance with the Company's policy stated in a letter issued to employees on February 26, 1962, attached hereto as Document # 18 and incorporated by reference.

10. During the course of the strike, approximately 30 bargaining unit employees worked on one or more days. In excess of 5450 of the approximately 5500 employees working in the bargaining unit on February 26, 1962, joined the strike and did not work. The Company hired no replacements for the striking employees. On March 4, 1962, the Company and Local 248 executed a new collective bargaining agreement, a copy of which is attached hereto and incorporated by reference as Document #.19.

11. On or about April 11, 1962, Local 248 directed copies of the letter attached as Document # 20 and incorporated by reference to members who were believed to have crossed picket lines and worked during the strike. At various times during the period February through May, 1962, members of Local 248 filed charges, of which Document # 21 attached hereto and incorporated by ref-

erence is representative, against members who were believed to have crossed picket lines to work during the strike. Commencing on or about April 11, 1962 and continuing to approximately May 4, 1962, Local 248 directed copies of a letter, attached hereto as Document # 22 and incorporated by reference, to members against whom such charges had been brought.

[fol. 28] 12. On July 9, 1962, Local 248 Trial Committee hearings were held upon such charges. Of the 30 members tried, 29 who crossed picket lines and worked during the 1962 strike were found guilty by the Trial Committee. In accordance with Article 30 of the International Union Constitution, a Trial Committee report, attached hereto as Document # 23 and incorporated by reference, was prepared and adopted without change by majority vote of those present at a membership meeting of Local 248 on August 5, 1962. On or about August 7, 1962, Local 248 directed copies of the letter attached hereto as Document # 24 and incorporated by reference to all of the aforesaid 29 members.

13. On or about May 8, 1963, Local 248 directed copies of the letter, attached hereto as Document # 25 and incorporated by reference, to all members who had not paid the aforesaid fines.

14. At all times material to this case, the members fined in 1959 and 1962 have been employed by the Company within the bargaining unit represented by Local 248 and covered by the agreements attached as Documents # 1, # 1(A) and # 19. None of these members have paid the above-mentioned fines imposed upon them by Local 248, except as indicated on attached Documents # 26 and 26(A) incorporated by reference herein. None of the fined members have been dropped from membership in Local 248 as a result of non-payment of the fines. None of the fined members have been dropped from membership in Local 248 and none of said members have taken action to resign or otherwise terminate their membership in Local 248, except in connection with the termination of employment or other normal causes. Local 248 has made no demand upon the Company to discharge or otherwise affect the employment status of the employees fined in 1959 and/or 1962.

[fol. 29] *Events at the LaCrosse Works*

15. The collective bargaining agreement in effect prior to August 15, 1958, between the Company and Local 401 is attached hereto as Document # 27 and incorporated by reference. Pursuant to agreement of the parties thereto, said agreement was extended until February 2, 1959. Article II of this agreement, and of the subsequent 1959 agreement attached hereto as Document # 27(A) and incorporated by reference, contains union security provisions. For the purposes of this proceeding only, it is admitted that, pursuant thereto, all non-probationary employees in the bargaining unit covered by said agreements have been members of Local 401 at all times hereinafter mentioned.

16. On February 2, 1959, Local 401 began an economic strike in support of its bargaining demands at the LaCrosse Works of the Company and commenced picketing the premises with placards stating "ON STRIKE." Two employees represented by and members of Local 401 chose to cross the picket lines and remain at work for the Company during the course of the strike, which terminated on April 19, 1959, when the Company and Local 401 executed Document # 27(A).

17. Upon charges filed against the aforementioned two employees and Trial Committee proceedings pursuant to Article 30 of the International Union Constitution, a Trial Committee report, attached hereto as Document # 28 and incorporated by reference, was prepared and adopted without change by majority vote of those present at a membership meeting of Local 401 on July 11, 1959. As a result of said proceedings, a fine of $100 was imposed by Local 401 upon each of the two charged members.

18. On or about May 15, 1962, Local 401 commenced [fol. 30] suit against both of the above-mentioned members for collection of said fines. Said actions have been maintained at all times subsequent thereto, except that suit against one member was dropped by Local 401 on June 13, 1962.

19. Upon expiration of the 1959 agreement (Document # 27(A)) as extended by the parties thereto, Local 401

began an economic strike in support of its bargaining demands at the LaCrosse Works of the Company at midnight on February 26, 1962 and commenced picketing the premises with placards stating "ON STRIKE." During the course of the strike, which lasted until March 5, 1962, four employees represented by and members of Local 401 chose to cross the picket line and work for the Company on one or more days of the strike. All others of the approximately 625 employees working in the bargaining unit on February 26, 1962, joined in the strike and did not work. The Company hired no replacements for the striking employees. On March 5, 1962, the parties executed a new collective bargaining agreement, a copy of which is attached hereto as Document # 29 and incorporated by reference.

20. During the month of March, 1962, charges attached as Documents # 30 (A), (B) and (C) and incorporated by reference were filed with Local 401 against the four members described above. On or about March 27 and June 4, 1962, Local 401 directed copies of the letters attached as Documents # 31 and # 32, respectively, and incorporated by reference, each of the said four members. On June 4, 1962, Trial Committee hearings were held by Local 401 upon said charges, and subsequently a Trial Committee report was prepared which is attached hereto as Document # 33 and incorporated by reference. On June 7, 1962, this report was adopted without change [fol. 31] by majority vote of those present at a Local 401 membership meeting. On June 11, 1962, Local 401 directed to each of said members a copy of the letter attached hereto as Document # 34 and incorporated by reference.

21. None of the fined members have been dropped from membership in Local 401 and none of said members have taken action to resign or otherwise terminate their membership in Local 401. Local 401 has made no demands upon the Company to discharge or otherwise affect the employment status of the employees fined in 1959 and/or 1962.

22. At all times material to this case, the members fined in 1959 and 1962 have been employed by the Com-

pany within the bargaining unit represented by Local 401 and covered by the agreements attached as Documents # 27, # 27(A), and # 29. None of these members have paid the above-mentioned fines imposed upon them by Local 401.

* * * *

This Stipulation of Facts is made without prejudice to any objection that any party may have as to the materiality or competency of any facts stated therein. Such objection when made in the briefs of any party shall be taken as if made by said party at an appropriate time to the testimony of witnesses offered in proof of said fact.

DATED at Milwaukee, Wisconsin, this 11th day of June, 1963.

LOCAL 248, UAW, AFL-CIO and LOCAL 401, UAW, AFL-CIO

By /s/ Max Raskin — Atty
Name — Title

ALLIS-CHALMERS MANUFACTURING COMPANY

By /s/ John G. Kamps — Attorney
Name — Title

GENERAL COUNSEL OF THE NATIONAL LABOR RELATIONS BOARD

By /s/ Gerry M. Miller & George F. Graf. — Counsel for the General Counsel
Name — Title

[fol. 32] ATTACHMENT # 1

1955-58

AGREEMENT

ALLIS-CHALMERS MANUFACTURING COMPANY
WEST ALLIS WORKS

with

LOCAL 248
of the
United Automobile Aircraft and Agricultural
Implement Workers of America, CIO

[Union Label]

* * * *

[fol. 33] Article II

Mutual Securities

Section A. Union Shop

Subject to applicable state laws:

1. Every employe who, on the effective date of this agreement, is a member of the Union shall, as a condition of employment, maintain his membership in the Union to the extent of paying his monthly dues;

2. Every person who is an employe on the effective date of this agreement shall, as a condition of continued employment, become a member of the Union by November 1, 1955 and shall remain a member of the Union for the duration of this agreement to the extent of paying his monthly dues and initiation fees, if any;

3. Every person who becomes an employe after the effective date of this agreement shall, as a condition of con-
[fol. 34] tinued employment, become a member of the Union within ninety (90) days following employment and shall remain a member of the Union for the duration of this agreement to the extent of paying his monthly dues and initiation fees, if any.

* * * *

[fol. 35] ATTACHMENT # 4

CONSTITUTION
of the
INTERNATIONAL UNION

United Automobile, Aircraft and Agricultural Implement Workers of America,
UAW

[SEAL]

Adopted at Atlantic City, N. J.
October, 1959

[Union Label] Printed in U.S.A.

* * * *

[fol. 36] ARTICLE 2

Objects

* * * *

Section 3. To improve the sanitary and working conditions of employment within the factory, and in the accomplishment of these necessary reforms we pledge ourselves to utilize the conference room and joint agreements; or if these fail to establish justice for the workers under the jurisdiction of this International Union to advocate and support strike action.

* * * *

[fol. 37] ARTICLE 6

Membership

* * * *

Section 2. Any person eligible to become a member of the International Union who is not affiliated with any organization whose principles and philosophy are contrary to those of this International Union as outlined in the Preamble of this Constitution, may apply for membership to the Local Union having jurisdiction over the plant in which he is employed. The applicant must, at the time of application, be an actual worker in and around the plant.

All applicants for membership in any Local Union of the International Union shall fill out an official application provided by the International Union, answering all questions contained in such application, and sign a promise to abide by all laws, rules and regulations and the Constitution of the International Union. All applications thus received shall be referred to the Local Union for consideration, and shall be acted upon as soon as possible, but [fol. 38] not later than sixty (60) days from the date the application is received by the Financial Secretary of the Local Union.

* * * *

[fol. 39] ARTICLE 30

Trials of Members

Section 1. A charge by a member or members in good standing that a member or members have violated this Constitution or engaged in conduct unbecoming a member of the Union must be specifically set forth in writing and signed by the member or members making the charges. *The charges must state the exact nature of the alleged offense or offenses and, if possible, the period of time during which the offense or offenses allegedly took place.* Two (2) or more members may be jointly charged with having participated in the same act or acts charged as an offense or with having acted jointly in commission of such an offense and may be jointly tried.

* * * *

[fol. 40]

Section 4. A member against whom charges have been filed shall be notified of such charges by receipted registered mail within seven (7) days after the charges have been submitted to the Local Union or, in the case of an Amalgamated Local Union, to the Shop Organization of which he is a member.

* * * *

Section 7. The accused member shall be tried by a Trial Committee selected by drawing names from the members attending the first Local Union or Amalgamated Local

Union unit meeting which is held at least five (5) days after the notification to the member charged. * * *

[fol. 41] Section 10. The Trial Committee, upon completion of the hearing on the evidence and arguments, shall go into closed session to determine the verdict and penalty. A two-thirds (⅔) vote shall be required to find the accused guilty. In case the accused is found guilty, the Trial Committee may, by a majority vote, reprimand the accused; or it may, by a two-thirds (⅔) vote, assess a fine not to exceed one hundred dollars ($100) with automatic suspension, removal from office or expulsion in the event of the failure of the accused to pay the fine within a specified time; or it may, by a two-thirds (⅔) vote, suspend or remove the accused from office or suspend or expel him from membership in the International Union.

Section 11. The Trial Committee shall thereupon report its verdict and judgment to the body from which it was selected at the membership meeting of that body next following the determination of the verdict and judgment of the Trial Committee, and in case of a verdict of guilty, such verdict and judgment shall become effective only upon approval by a majority vote taken by secret ballot at the membership meeting. In case of a verdict of guilty, the membership meeting may, by a majority vote taken by secret ballot, modify the verdict or order a new trial. The vote shall first be upon the verdict of guilty. If such verdict is not appoved by such majority vote, the accused shall stand acquitted. If the verdict of guilty is approved by such majority vote, the vote shall then be upon the penalty recommended by the Trial Committee. This vote shall be conducted by first voting by secret ballot upon the penalty recommended by the Trial Committee. If a majority vote supports the recommended penalty, it shall be considered approved. If a majority vote rejects the recommended penalty, the membership shall then decide upon an appropriate penalty by majority vote in a manner to be determined by the membership.

* * * *

[fol. 42] ARTICLE 43

Initiation Ceremony

The President shall say to the Guide:

"You will now place the candidate before me for the obligation." The Guide advances with the candidate and places him in front of the President's station. All newly elected members before being admitted to full membership shall subscribe to the following obligation:

"I ..... pledge my honor to faithfully observe the Constitution and laws of this Union and the Constitution of the United States (or Canada, as the case may be); to comply with all the rules and regulations for the government thereof; not to divulge or make known any private proceedings of this Union; to faithfully perform all the duties assigned to me to the best of my ability and skill; to so conduct myself at all times as not to bring reproach upon my Union, and at all times to bear true and faithful allegiance to the International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW).

* * * *

[fol. 43] ARTICLE 50

Strikes

Section 1. Whenever any difficulty arises within the jurisdiction of any Local Union within the shop involved, between its members and any employer or employers, growing out of reduction in wages, lengthening of hours of labor, or other grievances incident to the conditions of employment, or whenever any Local Union desires to secure for its members an increase in wages, a shorter work day or other changes in the conditions of employment, the Local Union involved shall call a meeting of all members to decide whether the proposed changes shall be accepted or rejected. The majority vote of those present and voting on the question shall decide. If, as a result of this decision, a strike vote is decided upon, the Local Union Executive Board shall notify all members, and it shall require a two-thirds (⅔) vote by secret ballot of those

voting to declare a strike. Only members in good standing shall be entitled to vote on the question of declaring a [fol. 44] strike. Where a different ratification procedure for a Local Union or an Intra-Corporation Council has been properly applied for under terms of Article 19, Section 3, and after the International Executive Board has approved such ratification procedure, the method for accepting or rejecting contract changes and the taking of strike votes shall be governed by the terms of the procedure approved by the International Executive Board for that Local Union or Intra-Corporation Council.

Section 2. If the Local Union involved is unable to reach an agreement with the employer without strike action, the Recording Secretary of the Local Union shall prepare a full statement of the matters in controversy and forward the same to the Regional Director and International President. The Regional Director or his assigned representative in conjunction with the Local Union Committee shall attempt to effect a settlement. Upon failure to effect a settlement he shall send the International President his recommendation of approval or disapproval of a strike. Upon receipt of the statement of matters in controversy from the Regional Director, the International President shall prepare and forward a copy thereof to each member of the International Executive Board together with a request for their vote upon the question of approving a strike of those involved to enforce their decision in relation thereto. Upon receipt of the vote of the members of the International Executive Board, the International President shall forthwith notify in writing the Regional Director and the Local Union of the decision of the International Executive Board.

Section 3. In case of an emergency where delay would seriously jeopardize the welfare of those involved, the International President, after consultation with the other International Officers, may approve a strike pending the submission to, and securing the approval of, the International Executive Board, providing such authorization shall be in writing.

Section 4. Neither the International Union nor any [fol. 45] Local Union, nor any subordinate body of the International Union, nor any officer, member, representa-

tive or agent of the International Union, Local Union or subordinate body shall have the power or authority to instigate, call, lead or engage in any strike or work stoppage, or to induce or encourage employees of any employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any good, articles, materials, or commodities, or to perform any services, except as authorized by the International Executive Board or the International President in conformity with the provisions of this Constitution. Such power and authority resides exclusively in the International Executive Board and the International President, and may be exercised only by collective action of the International Executive Board as provided in Section 2 of this Article or by emergency action of the International President as provided in Section 3 of this Article.

Section 5. Before a strike shall be called off, a special meeting of the Local Union shall be called for that purpose, and it shall require a majority vote by secret ballot of all members present to decide the question either way. Wherever the International Executive Board decides that it is unwise to longer continue an existing strike, it will order all members of Local Unions who have ceased work in connection therewith to resume work and thereupon and thereafter all assistance from the International Union shall cease.

Section 6. Any Local Union engaging in a strike which is called in violation of this Constitution and without authorization of the International President and/or the International Executive Board shall have no claim for financial or organizational assistance from the International Union or any affiliated Local Union.

Section 7. The International President, with the approval of the International Executive Board, shall be empowered to revoke the charter of any Local Union engaging in such unauthorized strike action, thereby annulling [fol. 46] all privileges, powers and rights of such Local Union under this Constitution.

Section 8. In cases of great emergency, when the existence of the International Union is involved, together

with the economic and social standing of our membership, the International President and the International Executive Board shall have authority to declare a general strike within the industry by a two-thirds (⅔) vote of the International Executive Board whenever in their good judgment it shall be deemed proper for the purpose of preserving and perpetuating the rights and living standards of the general membership of our International Union, provided, under no circumstances shall it call such a strike until approved by a referendum vote of the membership.

Section 9. In case of a general strike, it shall require a majority vote of the International Executive Board before the strike is officially called off.

* * * * *

[fol. 47] ATTACHMENT # 5

LOCAL 248—UAW

8111 West Greenfield Avenue
West Allis 14, Wisconsin

February 24, 1959

Dear Member:

It has come to our attention that on diverse days since February 2, 1959 you have disregarded the strike action of Local 248—UAW, walked through its picket lines and continued in employment at the Allis-Chalmers Plant, all in violation of the Constitution and By-Laws of the International and Local Union and the best interests of its members.

We desire to direct your attention to the fact that such action on your part constitutes conduct unbecoming a member of the union and upon a finding of guilty, subjects you to a fine up to $100.00 for each offense. Each day of violation may well constitute a separate offense.

The seriousness of your conduct becomes apparent when you realize that you are attempting to undermine the aims and objectives of 7378 employees and their families.

We hope that you will reverse your action and abide by the oath you took as a member of the Union.

Fraternally yours,

EXECUTIVE BOARD
Local 248, UAW-AFL-CIO

glt
oeiu-9-afl,cio

[fol. 48] ATTACHMENT # 6

Formal charges submitted to the Union Office

FILE COPY
Do Not Remove From File

TO: Local 248 UAW

The undersigned, a member in good standing of Local 248 UAW hereby charges that (ACCUSED MEMBER'S NAME) has engaged in conduct unbecoming a member of the union by:

entering upon and participating in production at the Allis Chalmers West Allis strike-bound plant on the —— day of ————, 1959

thereby seeking to defeat the economic goals and unity of purpose of the membership of Local 248 UAW and the International Union, all in violation of the Constitution of the International Union.

WITNESS'S NAME

Date: Date signed by Witness

[fol. 49] ATTACHMENT # 7

EDWARD MERTEN
President

FLOYD LUCIA,
Financial Secretary

CLIFFORD BROCKER,
Vice-President

MATTHEW KELLY,
Recording Secretary

LOCAL 248
UAW-AFL-CIO

8111 W. Greenfield Avenue West Allis 14, Wisconsin
Phone: Greenfield 6-7130 6-7131

[Union Label]

May 5, 1959

This is to inform you that you have been charged with "conduct unbecoming a Union member", inasmuch as you violated Local 248's picket lines during our last strike against the Allis-Chalmers Company. The specific charges are on file at the Local Union Office.

A Trial Committee will be selected at the June Membership Meeting per Section 7, Article 30 of the International Constitution.

You have also been placed under suspension by the membership (Section 6, Article 30 of the International Constitution) pending the outcome of your trial.

The Trial Committee will be selected by lottery (Section 7, Article 30 of the International Constitution) and you are entitled to be present, if you so desire.

Fraternally yours,

/s/ Matt Kelly
MATT KELLY,
Recording Secretary
LOCAL 248, UAW AFL CIO

MK:mlk
oeiu-9-afl-cio

[fol. 50]

ATTACHMENT # 8

LOCAL 248—UAW

8111 West Greenfield Avenue
West Allis 14, Wisconsin

June 18, 1959
Milwaukee, Wisconsin

Pursuant to the Constitution of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, you are hereby notified that the trial upon the charges filed against you (a copy of which has previously been mailed to you) will commence on July 7th, 1959 at 7:30 P.M. at the Local Union Headquarters, 8111 West Greenfield Avenue, West Allis 14, Wisconsin.

Please present yourself with your witnesses. You may appear with Counsel, if you so desire.

TRIAL COMMITTEE

By: /s/ Lucille Quinnies
Secretary, Trial Committee

mlk
oeiu-9-afl-cio

[fol. 51] ATTACHMENT # 9

EXHIBIT B

Report of Trial Committee No. 1

ITS FINDINGS, DECISION AND JUDGMENT

Charges of conduct unbecoming a union member were filed by various members of Local 248 UAW in good standing, against 155 other members of the local union. A Trial Committee denominated hereafter as Trial Committee No. 1, was chosen on June 13, 1959, in accordance with the Constitution of the International Union UAW, to hear, try and determine the guilt or innocence of the parties charged.

Each of the parties were notified of the charges and of the date of trial. All of the proceedings were had pursuant to the rules adopted by the Trial Committee.

The charges, in substance, stated that the members had engaged in conduct unbecoming a union member by entering upon and participating in production at the Allis-Chalmers Manufacturing Company West Allis strike-bound plant on one or more days during the progress of the strike, thereby seeking to defeat the economic goals and further, to weaken the unity of purpose of the members of Local 248 UAW and the International Union, all in violation of the Constitution of the International Union.

Each of the accused persons were represented by the same legal counsel, who had agreed to consolidate all of the cases, so that the testimony and evidence taken was to affect and control the verdict and judgment of each of the persons so charged.

[fol. 52] Counsel for the accused entered a plea of not guilty to these charges.

Hearings were held and testimony taken on various days beginning July 8, 1959, the last day of such hearings being on August 19, 1959. On that day, this Trial Committee and the Trial Committee later chosen, hearing similar charges, jointly heard further testimony. The

joint hearings were held with the consent and approval of counsel for the accused.

Counsel further agreed to an extension of time for the submission of this report. Arguments were made and briefs were filed by counsel for the accused in their defense.

Each member of Local 248 UAW is also a member of the International Union UAW. The Constitution of the International Union to which each member of Local 248 UAW subscribed, states that among the objectives of the union is to improve the economic and working conditions of the employees the union represents, and if necessary, to advocate and support strike action in order to gain such objectives. Therefore, it became the duty, obligation and purpose of each member of the union to support and participate in a strike called by the membership of Local 248 UAW.

The strike at the Allis-Chalmers Manufacturing Company West Allis plant, began on February 2, 1959. It was called by the membership of Local 248 UAW and authorized by the International Union, in conformity with the provisions of the Constitution of the International Union. The strike did not terminate until agreement was reached between the Allis-Chalmers Company and Local 248 UAW and the International Union, on April 20, 1959.

[fol. 53] Immediately following the calling of the strike, picket lines were stationed about the various gates of the plant, and full participation in and support of this strike were expected of each member of Local 248 UAW. The calling and the continuation of the strike was an integral part of the collective bargaining responsibility of Local 248 UAW and the International Union.

Each of the accused admits that he or she entered the plant and walked through the picket lines on the days, as charged, during the progress of the strike.

It is the opinion of this Trial Committee that by so doing, the accused persons attempted to reverse the action of the membership of Local 248 UAW and the International Union, who believed that in order to gain the objectives sought, it was necessary and essential to engage in the strike action.

The accused, further, by crossing the picket lines and entering into production, engaged in individual bargaining, thereby rejecting the Local and the International Union as the exclusive collective bargaining representatives.

Among the duties of a member of Local 258 UAW and the International Union is to consciously seek to understand and exemplify by practice, the intent and purpose of the obligations of a member and to acquit himself as a loyal and devoted member of the Local and the International Union.

No greater act of disloyalty to the members on strike, to the local union and the International Union, and to the [fol. 54] cause to which they have dedicated themselves can be committed by a member than to cross the picket lines which were established and authorized by his own union. The crossing of the picket lines did, in essence, give aid and comfort to the company at the very time when it was necessary to muster all of the moral and economic powers of the Local and International Union to gain the objectives of the strike.

By letter from the Executive Board of the Local 248 UAW, the accused persons were warned prior to any charges being filed against them, that their continuation in crossing the picket lines for the purpose of engaging in production at the plant might well subject them to a trial for conduct unbecoming a union member, and a possible fine. Except in a few instances, the accused disregarded such warning.

During the course of the trials, it came to the attention of the Trial Committee, that the Allis-Chalmers Manufacturing Company had engaged at its expense, legal counsel to represent the accused persons. Whether the accused knew of such retention prior to the trials is not clear.

Parties charged with conduct unbecoming a union member may be represented by counsel of their choice. But it ill becomes a company against whom a strike was called, to stretch its arms into the internal affairs of the Local Union, and thus interfere with its constitutional processes.

The Trial Committee, however, in arriving at its decision, did not consider this latter developments a factor in determining the guilt or innocence of the accused persons.

The Trial Committee gave long and serious considera- [fol. 55] tion to the matter of the guilt or innocence of the accused, and the subject of the fines and penalties to be imposed. Except in the case of eight of the accused, the Trial Committee did not have the benefit of the personal appearance of the individuals.

Each of the accused had the full opportunity to appear in person if desired.

It may be true that some of the accused had financial difficulties or personal problems which prompted them to cross the picket lines. But these were no different than the difficulties or problems of other members who consistently and at a sacrifice, supported the decision to remain on strike until it was settled through means of negotiations and bargaining between authorized committees and the approval of Local 248 UAW and the International Union.

Under the International Union Constitution, a person found guilty of charges may be subject to the payment of a fine not to exceed the sum of $100.00. It is true that most of the accused had continued to violate their duty and obligation of membership on more than one day. It is also true that each day of such violation could well be considered a separate offense accompanied by a separate penalty.

While the penalties assessed may be viewed by some as inadequate in the light of the grave offenses committed by the accused, the Trial Committee believes that the interest of the union will be best served by the adoption of its recommendations.

After hearing all of the evidence, viewing the various records and exhibits and listening to the arguments of [fol. 56] counsel for the accused, we, the Trial Committee, find as follows:

(1) That the steps taken by Local 248 UAW, the International Union and the officers and representatives, in the calling, authorizing and conducting the strike, beginning on February 2, 1959, were all in accordance and

compliance with the provisions of the International Union Constitution and the powers vested therein.

(2) Each of the accused passed through the picket lines during the progress of the strike on the days as charged.

(3) Each of the accused engaged in individual bargaining by accepting the terms of the Allis-Chalmers Manufacturing Company at a time when the same were rejected by the duly authorized collective bargaining representatives of the members of Local 248 UAW and the International Union.

(4) Each of the accused violated their duty and obligation of membership, and deserted the cause of their Local and International Union.

(5) Each of the accused consciously failed to acquit himself or herself as a loyal and devoted member of Local 248 UAW and the International Union.

(6) Each of the accused, although it was their duty to support the strike, by their conduct gave aid and comfort to the company at a time when the membership was on strike against the company.

It is our judgment, therefore, that each of the accused parties charged with conduct unbecoming a union member is guilty of such charge, and that as a penalty therefore, each must pay a fine in the amount set forth opposite his or her name, as follows.

[fol. 57] ATTACHMENT # 12

LOCAL 248—UAW

8111 West Greenfield Avenue
West Allis 14, Wisconsin

September 18, 1959

You have had a fair trial by the Trial Committee, as selected by the members of Local 248, under the provisions of the International Constitution.

The guilt and fine assessed against you for conduct unbecoming a union member has been brought to the membership for their consideration. The membership has upheld the Trial Committees in their decisions and fines.

You are, therefore, indebted to Local 248 in the sum of $100.00 and payment thereof is demanded in order to again be in good standing in Local 248.

You may pay your fine by check or money order made payable to Local 248, UAW, or you may come to settle this matter in person.

Respectfully,

/s/ Frank Starich
FRANK STARICH,
Recording Secretary
LOCAL 248, UAW-AFL-CIO

FS:glt
oeiu-9-afl,cio

[fol. 58] ATTACHMENT # 13

WILLIAM JOHNSON
President

FLOYD LUCIA
Financial Secretary

MATTHEW KELLY
Vice-President

FRANK STARICH
Recording Secretary

LOCAL 248

UAW-AFL-CIO

8111 W. Greenfield Avenue West Allis 14, Wisconsin
Phone: GReenfield 6-7130 6-7131

[Union Label]

October 6, 1960

You were formally notified back in September, 1959 by Local 248 of your obligation concerning the payment of $100.00, which represents the fine assessed against you for conduct unbecoming a Union member during the course of the 1959 strike.

Since that letter of September 18, 1959, however, we have NOT sent you any further notification of your obligation to pay your fine, as we were awaiting the decision of the State Supreme Court on these matters.

On Tuesday, October 4, 1960, the Supreme Court of Wisconsin ruled that "a labor union has the right to levy a fine against union members who have been found guilty of conduct unbecoming a union member by reason of crossing a picket line".

Since you had a fair trial, and the membership of Local 248 upheld the decisions of the Trial Committee, and a fine was levied against you, which has NOT been paid, we ask at this time that you pay, in full, your obligation to Local 248. We hope that no further proceedings will be necessary to enforce collections.

You may pay your fine by check, or in person, and deposit with the Financial Secretary of Local 248 at your earliest convenience. May we hear from you soon?

Sincerely yours,

/s/ Floyd Lucia
FLOYD LUCIA,
Financial Secretary
LOCAL 248, UAW-AFL-CIO

FL:mlk
oeiu-9-afl-cio

[fol. 59] ATTACHMENT # 14

WILLIAM JOHNSON
President

FLOYD LUCIA
Financial Secretary

MATTHEW KELLY
Vice-President

FRANK STARICH
Recording Secretary

LOCAL 248
UAW-AFL-CIO

8111 W. Greenfield Avenue . West Allis 14, Wisconsin
Phone: GReenfield 6-7130 6-7131

[Union Label]

April 21, 1961

The United States Supreme Court has refused to change the decision of the Wisconsin Supreme Court, upholding the right of Local 248 to fine a member who entered the strike-bound plant of the Allis Chalmers Manufacturing Company during the strike.

We have previously informed you that you have been found guilty as a result of a trial before the Local Union Trial Committee and fined in the sum of $100.00. This sum is due Local 248, UAW-AFL-CIO and we hope you will no longer delay its payment.

We, therefore, urge you to pay this amount by NO LATER THAN MAY 1, 1961. Your failure to do so will compell us to turn the matter over to our attorneys, Raskin, Zubrensky and Padden, for civil suit.

Very truly yours,

/s/ Floyd Lucia
FLOYD LUCIA,
Financial Secretary
LOCAL 248, UAW-AFL-CIO

FL:glt
oeiu-9-afl,cio
(cert.)

[fol. 60] ATTACHMENT # 16

STATE OF WISCONSIN
COUNTY OF MILWAUKEE
IN COUNTY COURT, BRANCH # 7

LOCAL UNION # 248, U.A.W., PLAINTIFF

—*vs*—

BENJAMIN NATZKE, DEFENDANT

October 16, 1962 at 9:30 A.M. Trial to the Court, the Hon. Edwin C. Dahlberg, Presiding.

APPEARANCES: Mr. Max Raskin, Atty. for the Plaintiff.

Defendant in person and by Mr. Herbert Mount, Atty.

THE FOLLOWING PROCEEDINGS WERE HAD AND TESTIMONY TAKEN.

* * * *

[fol. 61] MR. RASKIN: I will stipulate that he became a member of the plaintiff union because it was required as a condition of employment. I will stipulate to that.

MR. MOUNT: That should come from the defendant.

MR. RASKIN: It's admitted he was a member of limited association, if you want to explain his membership I have no objection. You admit he was a member of the union, if you want to explain how he became a member, I have no objection to that.

MR. MOUNT: Where he is or is not I am not prepared to state at this time.

MR. RASKIN: The answer says he was a member but says he was a limited member.

MR. MOUNT: I will stipulate to the language in the answer.

COURT: I think it's a matter that requires proof.

MR. MOUNT: I have here the agreement, contract between Allis-Chalmers and Local # 248, the 1958 agree-

ment being I understand contains the union shop provision, is the same as 1955.

MR. RASKIN: the '55 is like this (Plaintiff's Exhibit # 1 marked 1955-58 Agreement)

MR. RASKIN: Would it be necessary to introduce testimony as to its being accepted.

MR. MOUNT: That's not in dispute.

COURT: If that is all we can stipulate to Mr. Raskin will you call your first witness?

[fol. 62]

FLOYD LUCIA SWORN TO TESTIFY ON DIRECT EXAMINATION BY MR. RASKIN:

Q. Will you state your name?

A. Floyd Lucia.

Q. Where do you live?

A. 3244 No. 87th St. Milwaukee,

Q. Are you employed by the plaintiff union # 248 UAW?

A. I Am.

Q. Do you hold any office?

A. I am financial secretary of the Milwaukee union on a full time basis.

Q. Is that local union for members or employees of Allis-Chalmers of West Allis?

A. Yes.

Q. You are the financial secretary?

A. Yes.

Q. And as such do you keep a record of employees who become members of the union?

A. I have all such records, yes.

Q. In the case of Benjamin Natzke, can you tell us what your records shows with respect to his membership in the union?

A. Our record indicates that shortly after the signing of the 55-58 agreement where it became necessary for some nine hundred people who were not in the union there, he attended a membership meeting on November 1, 1955 and became initiated along with several hundred others.

OBJECTION BY MR. MOUNTS: Not the best evidence.

MR. RASKIN: Do you have the records you are referring to with you?

A. I do.

* * * * *

[fol. 63] MR. MOUNT: I object—

COURT: I'll sustain the objection.

MR. RASKIN: We must establish these customs, we know what was done this is customary in the union.

MR. MOUNT: Those minutes don't prove he was there. This witness doesn't know whether the defendant was there by the testimony.

MR. RASKIN: I'll withdraw this witness and I will get Mr. Kelly here. I will introduce this document thru Mr. Kelly who was then secretary.

CROSS-EXAMINATION BY MR. MOUNT:

Q. Mr. Lucia, do you know of your own knowledge whether or not Mr. Natzke ever signed what is called an application for membership?

A. They are called authorization for check-off of dues, that's the application and he did sign one.

Q. Is there another form of card, a green card, known as application for membership which was used at about that period of time?

A. No. Long before that the authorization for check off of dues became effective with the 1950-55 agreement. Prior to 1950 they didn't have what is called an all union shop.

Q. Do you have with you or can you obtain the last form or the application or right to authorize that check-off?

MR. RASKIN: That's incorporated in the contract.

MR. MOUNT: I am concerned about the language.

MR. RASKIN: I have no objection to the card being offered into evidence.

QU. The card marked Defendant's Exhibit "2", entitled authorization for check-off of dues to Allis-Chalmers Manufactuirng Company Is that the card which

you have been referred to as the check-off authority card?
[fol. 64] A. Yes.

* * * *

[fol. 65]

MR. MATT KELLY SWORN TO TESTIFY ON DIRECT EXAMINATION BY MR. RASKIN:

* * * *

[fol. 66] A. There were some people who for some personal reason could not make the membership meeting, they were told to come to the union office, and either myself or someone would be present.

Q. I show you what has been marked Plaintiff's Exhibit # 4, could you identify this exhibit—what is it?

A. This is notification to the member to attend the membership meeting to be initiated.

Q. For what meeting—for what date?

A. This one date for November 1st meeting, 1955.

MR. RASKIN: I would offer Exhibit # 4 into evidence as the notice sent to members.

MR. MOUNT: No objection.

COURT: Then without objection Exhibit # 4 will be admitted into evidence, having heretofore been marked Exhibit # 4.

Q. Was it your duty to send these letters out?

A. It was.

Q. With respect to the people whose names appear on the list which is attached to the minutes of November 1st, can you tell whether or not these letters were sent to these people?

A. They were definitely.

Q. That includes Benjamin Natzke?

A. Yes.

MR. RASKIN: On this Exhibit # 4 at the bottom of it in handwriting signed by some individual who had returned this letter making an excuse for not being able to be present at this meeting, this is not part of the exhibit.

Q. When we speak of initiation, what was the initiation that was conducted?

A. What form was used?

[fol. 67] Q. Yes? You understand me?

A. We would ask the new members to rise and come to the front and address them, tell them what their obligations were as union members, and then read the oath, explain some of the international customs.

Q. Can you refer to the oath that was invoked? (1957 Constitution attached to pleadings used by witness)

A. Yes, this is it, item # 43, page # 105 of the '57 constitution. This is exactly what was read and the newly initiated members were asked to raise their right hands and repeat their name, and I would read this entire obligation and it would be repeated by the newly initiated members.

Q. Was that done on November 1st with respect to the names attached to the minutes, including the name of Benjamin Natzke?

A. Yes.

MR. RASKIN: That's all.

CROSS-EXAMINATION BY MR. MOUNT:

Q. How long have you been a member of the union?

A. Twenty years.

Q. Is it your testimony that all of the persons whose names appear on the list attached to the minutes of November 1, 1955 were present in person on that evening?

A. Yes.

Q. Every one?

A. Yes.

Q. Some are marked the second shift, does that include those also?

A. Yes, I did separate the minutes in the afternoon and the minutes in the evening meeting.

Q. Was a roll call had of the persons who appeared as new members?

[fol. 68] A. No sir.

Q. The only statement in these minutes which you said you took as to the initiation which was as follows: at this point after the space which says some brief remarks by Koenig.

A. Yes.

Q. After these remarks this is the entry: At this point the new members that were present (256) were initiated into local # 248 UAW-CIO?

A. That is on the second page of the minutes, yes.

Q. The president spoke briefly to the new members about to be initiated and stressed the fact that full participation of every member was necessary to build a strong union, and then refers to the initiation, "at this point the new members that were present (256) were initiated into local 248, UAW-CIO, (see attached list)". That is the extent of the record of what transpired as to the initiation that night, is that right?

A. That's correct.

Q. When was it that the check-off authority cards were signed by these people, before this meeting—when they applied for membership?

A. I couldn't say for certain—that's how we collect our dues.

Q. When do they sign the check-off authority?

A. Well we never sent notices out to anyone but the ones for initiation.

Q. Defendant's Exhibit "E" is Authorization for Check-off, was this card used in 1955?

A. Yes that's the one we used.

Q. And this is where you got the names of new mem-
[fol. 69] bers who had applied for membership and were to present themselves for initiation?

A. Yes.

Q. At this time in 1955 there was no other application card for membership?

A. There was the check-off and then those who did not want to sign the check-off were window-paying members.

Q. There was no other formal application for membership in the union? At this time in 1955 was a person desiring to join the union required to sign any other form of card of application than Exhibit "E"?

A. If they wanted to become members and didn't want to sign the check-off card they could pay the dues at the window. They didn't have to sign one of these to become a member of the local.

Q. If they were willing to sign the check-off authority, then Exhibit "E" would be the only card which was signed?

A. Yes.

Q. At the meeting of November 1, 1955, which is now almost seven years ago—?

A. Yes, that's correct.

Q. Do you recall whether at that time the new members who were present were ordered to the front of the room?

A. Yes.

Q. They were ordered to raise their right hand and repeat the oath which was pointed out in the international constitution?

A. Yes.

Q. Was this list attached to the minutes prepared before or after the meeting?

A. It was after the meeting.

[fol. 70] Q. This was prepared from the checkoff cards?

A. No sir.

MR. RASKIN: The list was not prepared from these, he's already testified to this.

COURT: The question has been asked and answered.

MR. MOUNT: That's all.

RE-DIRECT EXAMINATION BY MR. RASKIN:

Q. The list that is attached to the minutes, where did those names come from:

A. As I stated before, this was the membership list that we received at the membership meeting which was signed by the individuals by each new member present at the meeting and initiated.

Q. Where was the list that was used for the purpose of notifying people to come to the initiation meeting for initiation?

A. The application card was the check-off card, the people who didn't sign were window-paying members.

Q. Is that what happened in 1955, November?

A. Yes, I sent letters to each and every member.

MR. RASKIN: That's all.

MR. MOUNT: No re-cross examination.
MR. RASKIN: We rest at this time.

* * * * *

[fol. 71]

BENJAMIN NATZKE SWORN TO TESTIFY ON DIRECT EXAMINATION BY MR. MOUNT:

Q. Mr. Natzke, how long have you been working for Allis-Chalmers?
A. In 1947, April.
Q. When did you join the plaintiff union, local # 248?
A. I believe around 1955, when that contract was negotiated for closed shop.
Q. You are referring to the contract between Allis-Chalmers and Local #248?
A. Yes.
Q. And was there any other reason why you joined the union at that time?
OBJECTION BY MR. RASKIN: Immaterial.
COURT: I'll sustain the objection.
Q. At the time in 1955 that you did join was that because of the contract which had just been recently signed?
A. Very definitely.
Q. What did you have to do in order to join the union?
A. I was asked at that time to sign a membership card, which I did.
Q. By membership card do you mean this Exhibit "E" which is check-off authority?
A. I signed a check-off authority but it seems to me I signed a second card, I am not sure.
Q. Did you receive a notice to come to the union meeting?
A. I did.
Q. And can you recall whether that was about November 1, 1955?
A. I presume it was thereabouts.
Q. State whether or not you did attend that meeting?
A. Not to my recollection.
[fol. 72] Q. State whether or not you ever attended a meeting at which you were called upon to rise and come to the front of the room?

A. Not to my recollection.

Q. Did you ever attend a meeting at which you were asked to raise your right hand and repeat the oath of allegiance to the union?

A. Not to my recollection.

Q. State whether you were called into the office of the union and in the presence of one or more officers asked to raise your right hand and repeat the oath of allegiance to the union?

A. No sir.

Q. Do you recall attending any union meeting at which you signed a list on which other names were signed?

A. No sir.

Q. To your knowledge, if you recall from 1955 to 1959 was there more than one kind of membership in the union?

A. I believe so because I considered myself more or less of a dues paying member, not active, and asked favors of nobody.

Q. To what extent did you participate in any union activity?

OBJECTION BY MR. RASKIN: Immaterial and irrelevant.

COURT: I'll overrule the objection, the witness may answer.

QUESTION REREAD BY THE REPORTER

A. None whatever.

Q. As to being a member, was there anything required of you in connection with paying dues?

A. No I had signed a check-off card.

Q. The Company paid the dues?

A. The Company paid the dues.

Q. Mr. Natzke, do you recall attending a hearing called [fol. 73] by the local union at the union headquarters?

A. Yes.

* * * *

[fol. 74] COURT: Except for your objection that the exhibit is immaterial and the whole line of questioning is immaterial, have you any objection to the exhibit being received?

MR. RASKIN: Not to the authenticity

COURT: On that limited basis it will be received.

Q. Mr. Natzke, the balloting which took place on August 13, 1958 was at the Milwaukee Auditorium?

A. Yes.

Q. And was there any form of report or statement made by the union officials before the balloting while you were there?

A. There was a statement made by one of the officers that the voting was a vote of confidence for the bargaining committee, and that before a strike would be taken that it would be again referred to the bargaining committee, that the members would again be advised.

Q. After the August balloting were pamphlets from time to time handed out at the plant gate to the employees, the workers?

A. Yes they were.

Q. Do you recall one dated November 11, 1958 which has been marked Defendant's Exhibit "G", can you identify that?

A. Yes I seen that before.

Q. Did you see it about that time—what is that date—November, 1958?

A. About that time.

Q. And I ask whether the matter of further decision in the strike situation was again brought to the membership?

MR. RASKIN: The instrument speaks for itself.

COURT: You have no objection except the general objection that this line of questioning is immaterial?

MR. RASKIN: Yes.

[fol. 75] COURT: For that limited purpose it will be received.

MR. MOUNT: I call the court's attention to the last two paragraphs, Blank Check Strike Authority. This exhibit bears the stamp of the Court Commissioner Evan C. Schwemer, that may be disregarded.

Q. State whether or not you cast your ballot on that occasion after listening to statements made by union leaders?

A. That's right, after statements were made.

Q. Do you recall a further meeting on February 2, 1959 of the general membership?

A. Yes.

MR. RASKIN: I object to this line of questioning.

COURT: You object to this entire line of testimony on the grounds it is immaterial Mr. Raskin?

MR. RASKIN: That's right.

COURT: We will take the testimony subject to your objection.

Q. Where was that meeting held?

A. At the Auditorium.

Q. What time of day?

A. Right after 11:00, shortly after that.

Q. Were you on the first shift at that time?

A. Yes.

Q. You worked in the morning?

A. Yes.

Q. Did you leave the plant that morning?

A. Yes.

Q. Were you notified of the meeting?

A. I believe I was.

Q. Do you recall the purpose of the meeting?

A. I don't recall what was said but I do know it was for the purpose of a strike.

[fol. 76] Q. After you left the plant, state whether or not there were any pickets on duty at that time?

A. Yes there were.

Q. What time did you get down to the Auditorium?

A. Somewhere between 11:15 and 11:30.

Q. Was there a large crowd there?

A. Yes.

Q. Was there any discussion by local union leaders or international union leaders?

A. There were some comments made.

Q. Was the question of the strike discussed?

A. There was just comments from the bargaining committee or the officers, and somebody from the floor asked whether the members could be heard and he was told they had been heard, you have had an opportunity.

Q. Was there any discussion in opposition to the calling of the strike at the time in question?

A. There was no discussion I know of.

Q. Was there any proposition made by the company presented to the membership at that time as to contract conditions?

A. No sir.

Q. Did you go back into work on that date?

A. No sir.

Q. When was it on what date did you go back to work?

A. About two weeks later.

Q. After that you received this warning that you were violating the union constitution, something to that effect, is that right?

A. Yes.

Q. Did you, nevertheless, continue to work?

[fol. 77] A. Yes.

* * * *

[fol. 78]

JEAN EGGEBRECHT SWORN TO TESTIFY ON DIRECT EXAMINATION BY MR. MOUNT:

* * * *

[fol. 79] Q. Is this the notice of the meeting you referred to being held July 12th?

A. Yes it is.

Q. Did you receive such a notice as Exhibit "H"?

A. Yes.

MR. MOUNT: I call the Court's attention to the # 2 marked on here by Court Commissioner Schwemer.

Q. On July 12th do you know whether or not discussions were being held between Allis-Chalmers and the bargaining committee of local # 248?

A. If there were discussions we were not so informed.

OBJECTION BY MR. RASKIN: Not responsive.

COURT: I'll overrule the objection—the answer may stand.

Q. Do you know whether or not the '55 contract was up for renewal at that time?

A. Whether or not the contract was up for renewal?

Q. Was there discussion of the contract at the July meeting, the July 12th meeting?

A. No.

Q. Was there discussion of a strike vote?

A. Not to my knowledge, not at the July meeting.

Q. Was a strike vote to your knowledge authorized to be taken at any time?

A. At the July meeting.

Q. Do you know or recall when the secret ballot was taken on the question of strike?

A. At the August ballot.

Q. At the South Side Armory meeting in July, do you recall what statements, if any, were made by the execu- [fol. 80] tive officers or executive board members with regard to taking a strike vote?

A. At the time we were told that they would like a vote of confidence to show the company the strength.

Q. Did you attend this balloting on August 13th?

A. I attended, I didn't vote.

Q. Were you for or against the strike action?

A. I was against it, and I didn't vote because I wouldn't give a blank check to anybody, they should have had negotiations, that was my opinion at the time.

Q. You stated you did attend at the Auditorium?

A. I did.

Q. Were any statements made by officers of the union or the international union on the question of the strike?

A. The greatest portion of the discussion was by an international officer, Greathouse.

Q. Do you recall what was said on the subject of the strike?

A. We were told that if it would be deemed necessary to call a strike it would be taken back to the membership first before any action would be taken.

Q. At that time were you informed of the bargaining —of the negotiations between the local and the company?

A. Through leaflets and word of mouth is about all we could get.

Q. You mean—

A. Flyer distribution.

Q. Phamplets?

A. That's right.

Q. And between August 13th and February 2nd were [fol. 81] any general meetings of the membership called by the union to discuss the negotiations?

A. Not that I was notified of.

Q. Do you recall a meeting called at the Milwaukee Auditorium on February 2, 1959?

A. I definitely do.

Q. And did you attend that meeting?

A. I did.

Q. What time was it called for?

A. It was called for eleven, I arrived shortly after eleven.

Q. What time did you leave the plant?

A. I left the plant about ten to eleven.

Q. Were you working the first shift?

A. I was.

Q. At the time you left the plant can you state whether or not any pickets were posted outside the gates?

A. Pickets were at the gate.

Q. Were you advised what the purpose of the meeting at the auditorium was?

A. The purpose of the meeting, information on bargaining.

Q. Were any reports made to the members present at that time in the auditorium?

A. Briefly there was a discussion at which time they told us there was no bargaining, I do not recall the words verbatim but to the effect that we were going to stay out on this strike.

Q. You were told you were going out on strike?

[fol. 82] A. Yes.

Q. Was there any secret ballot, was a ballot taken at the meeting of February 2nd?

A. A secret ballot?

Q. Was any ballot taken?

A. No ballot, no written form, a vote, yes.

Q. What kind of vote?

A. Standing vote, rising vote.

Q. What was the question—on what question?

A. The question was at that time whether we should support the executive committee.

Q. Was this relative to the strike?

A. Yes.

Q. Was any proposal by the company reported to the meeting?

A. No sir.

Q. Was there any discussion from the floor on the motion to support the Executive Committee?

A. No sir.

Q. Did you attempt to speak?

A. I didn't—others did.

Q. Did you see anyone else attempt to speak?

A. Yes the gentlemen sitting right next to me attempted to.

Q. Was there a microphone there?

A. There was, I was sitting behind it.

Q. Did he get the floor?

A. He took the microphone, made one statement and they immediately cut the power of the microphone off.

* * * *

[fol. 83]

CROSS-EXAMINATION BY MR. RASKIN:

Q. You were removed as an officer of the union were you not?

A. Yes, from two offices.

Q. The reason for your removal was because you didn't attend union meetings, isn't that right?

A. No. One particular meeting.

Q. You don't know what the issues were between the company and the union with respect to negotiations did you?

A. I didn't say I didn't know the issues.

Q. You did know them?

A. I said I was not informed by local # 248.

Q. What?

A. I said I was not informed by local # 248.

A. Who were you informed by?

A. I read the paper, information from meeting people, other members and employees.

Q. Were you provided with the minutes?

A. Very seldom.

Q. Were you provided with the officers minutes with respect to the issue between the company and the union?

A. Occasionally.

Q. You didn't vote at the August 13th meeting did you?

A. Most certainly not. I wouldn't give anybody a blank check without knowing what it was.

Q. You didn't vote?

A. No sir.

Q. You had an opportunity to vote?

A. I had an opportunity.

Q. You didn't take that opportunity?

A. No sir.

[fol. 84] Q. You were at the meeting of July 12th?

A. I was.

Q. Did you vote at that meeting?

A. No sir.

Q. You had an opportunity to vote?

A. Yes sir.

Q. That meeting was simply to authorize the holding of the meeting of August 13th, isn't that correct?

A. Partially. You'll find all that in the by-laws.

Q. Just answer the questions.

A. I am answering the questions.

Q. You don't believe in strikes do you?

A. I didn't say that.

Q. I asked whether you do or you don't?

A. Not entirely. I believe in thorough and complete negotiations first.

Q. Did you know that Local # 248 had another strike very recently?

A. Yes.

Q. You went back to work or scabbed, continued to work?

OBJECTION BY MR. MOUNT: Immaterial. This witness is not on trial.

MR. RASKIN: No but she's next.

COURT: I'll sustain the objection.

Q. When you appeared before the trial committee you had an attorney did you not?

A. I did.

Q. Who took care of the fees for your attorney?

A. I don't know.

[fol. 85] Q. You never paid for him?

A. I have received no bill, I don't even know if he has been paid.

Q. You never paid him?

A. No.

Q. You knew Mr. Mount before he represented you?

A. Yes.

Q. Did he tell you he was doing it gratis?

A. No.

Q. Are you being paid today by the company for being here?

A. No sir, I am receiving a witness fee only.

MR. RASKIN: That's all. I now move that all the testimony with respect to the calling of the strike, the strike vote, etc. all of the testimony that was given on direct or cross-examination by the defense witnesses be stricken.

COURT: The Court will take the motion under advisement, I will rule on that matter later. Mr. Mount do you have any further testimony?

MR. MOUNT: Not at this time.

* * * *

[fol. 86] COURT: Mr. Raskin do you have rebuttal testimony?

A. Yes.

Will you proceed.

HARRY KITZMAN SWORN TO TESTIFY ON DIRECT EXAMINATION BY MR. RASKIN:

Q. Will you state your name?

A. Harry Kitzman.

Q. Where do you live?

A. 2932 No. Hackett, Milwaukee.

Q. Do you hold any position with the International Union of which local # 248 is affiliated?

A. I do.

Q. What position do you hold?

A. International executive board member and regional director of region # 10 in which local # 248 lies.

Q. Region # 10 is comprised of various locals, is that correct?

A. Correct.

Q. Of which the U.A.W. is one?

A. Correct.

Q. Local Union # 248 is part of region # 10 and part of the International Union?

A. Correct.

Q. Were you familiar with the fact that a vote was taken on August 13, 1958 by local # 248 giving authority to the executive board to call a strike when and if necessary?

A. I was.

Q. Were you familiar with respect to the procedure?

A. I was.

[fol. 87] Q. Following the taking of that vote, will you state whether or not the international union gave approval to the strike?

A. Following the taking of the vote the local union filled out the regular application form which is customary when a vote has been taken, the results of the vote, how many "Yes" and how many "no", and requests strike authority, that has to go through me. I forward it to the International with the recommendation that strike authority be granted.

Q. The strike vote even before the actual strike was in progress is given approval by the international union?

A. Correct.

Q. Will you state what are the usual and customary practices—

A. Why strike authority is granted you mean?

Q. Yes—what are the practices?

A. This is the general practice that has been followed. After a strike vote is taken the local union makes application for strike authority, I forward it on to the International union with a recommendation strike authority be granted, if I don't feel it is warranted I will then recommend strike authority be held up pending further negotiations or investigations. This is done all the time, strike authority is granted sometimes months in advance, in some instances strikes never take place, in fact out of some 35 or 40 strike authority that were granted in the last year, only one went into effect.

OBJECTION BY MR. MOUNT: Immaterial and irrevelent.

MR. RASKIN: I think we have the right to show usual procedures.

COURT: I will take the testimony subject to your objection Mr. Mount.

[fol. 88] Q. I'll show you this Exhibit F, this has been introduced as part of the record, this is the ballot which was used on October 13th by local # 248, can you tell whether or not the language in this ballot is or is not the language regularly and customarily used by local unions of the U.A.W. when voting for authority to strike?

A. That's the language.

OBJECTION BY MR. MOUNT: Immaterial and irrevelent.

A. This is the customary language that is used whenever a strike vote is taken.

COURT: I'll permit the answer to stand.

Q. Is there any other secret ballot necessary following this?

A. No.

OBJECTION BY MR. MOUNT: Immaterial.

COURT: I'll sustain the objection.

MR. RASKIN: If the court will not permit this testimony I will make an offer of proof.

Q. Mr. Kitzman what is the usual and normal practice with unions in the region of U.A.W. under the constitution with respect to the necessity of taking another secret ballot vote after one has been taken in the language as we have it here?

A. There is none.

MR. MOUNT: This is the offer of proof?

COURT: Yes.

MR. MOUNT: I will object to this testimony.

COURT: I will sustain your objection.

MR. MOUNT: No questions.

[fol. 89]

MR. FLOYD LUCIA RECALLED—REBUTTAL BY MR. RASKIN:

COURT: Mr. Lucia, you are still under oath, you understand that?

A. Yes sir.

Q. I show you what has been marked Exhibit # 9, will you tell us what this is?

A. This is a certificate of election form which is kept in the record of the union, it was turned over by—

Q. What election?

A. Strike vote.

Q. Continue—when?

A. On Wednesday, August 13, 1958.

MR. RASKIN: I offer Exhibit # 9 into evidence, certification of Election.

MR. MOUNT: I have some questions.

COURT: Very well Mr. Mount, do you want to cross-examine on this?

MR. MOUNT: Yes.

EXAMINATION BY MR. MOUNT:

Q. Exhibit # 9 does not have the date upon which this exhibit was prepared does it?

A. It was prepared August 13, 1958.

Q. Did you prepare it?

A. No it was prepared by the election committee.

Q. Is that the ballot on which there was a recount later with different results or is this the original?

A. There was no recount whatever on that, none whatever.

Q. Were there any questions on this occasion regarding the retabulation figure later on?

A. No.

[fol. 90] Q. That didn't occur on this date?

A. No.

MR. MOUNT: I have no objection other than the general objection to the whole line of testimony.

COURT: As the court understands it, this will be received subject to your general objection to the whole line of testimony.

FURTHER EXAMINATION BY MR. RASKIN:

Q. Were you present at the meeting of August 13th?

A. Yes.

Q. What kind of discussions, if any, were had at that meeting?

A. At the August 13th meeting?

Q. Yes.

A. We talked about what had taken place with the company and the union up until that particular date, up until August 13th the company had not made any concrete proposal whatever. Just two days later after the August 13th strike vote the company very quickly responded with an offer and of course was considered as a start and that was up to August 15th. There were negotiations taking place between the company and the union up to that date and a report to the membership.

Q. Was this report made?

A. Yes.

Q. Were you present at the meeting of February 2, 1959?

A. Yes.

Q. State whether or not any report was made with respect to the bargaining committee negotiations from August 13th?

A. Yes by the bargaining committee, by the present of the union and other officers.

[fol. 91] Q. From August 13, 1958 to February 2, 1959 state whether or not members of the union and employees of the company were appraised of the negotiations with respect to the bargaining or negotiations?

A. Yes.

Q. Were there regular union meetings during this period?

A. Yes.

Q. Were reports given at these meetings?

A. Yes in entirety.

Q. Members of the union were free to come and attend the meetings and listen to the reports?

A. Yes.

CROSS-EXAMINATION BY MR. MOUNT:

Q. Under the constitution as you know it the final right to call a strike belongs to the membership does it not?

OBJECTION BY MR. RASKIN:

COURT: I'll sustain the objection.

Q. February 2nd was the actual date of the strike? Is that correct?

A. Yes.

MR. MOUNT: That's all.

MR. RASKIN: Nothing further.

* * * *

[fol. 92]

MR. MATT KELLY RECALLED TO TESTIFY ON EXAMINATION BY MR. RASKIN:

COURT: You are still under oath Mr. Kelly do you understand that?

A. Yes sir.

Q. I show you Exhibit # 10 can you identify that?

A. Yes.

Q. What is that?

A. This card was sent out to the entire membership notifying them the vote was going to be held on August 13, 1958.

Q. This card was sent out to the entire membership?

A. Yes.

Q. Including the defendant in this case?

A. The entire membership was notified.

MR. RASKIN: I offer Exhibit # 10 into evidence.

MR. MOUNT: No objections.

COURT: Do you have any further questions Mr. Raskin?

A. No.

Mr. Mount?

A. No.

MR. RASKIN: I would like to recall Mr. Lucia again.

MR. MOUNT: May be it won't be necessary, perhaps we can stipulate on this card.

MR. RASKIN: Can we stipulate that except for the color the membership card which Mr. Mount is holding in his hand is a true copy of the one that the defendant had during the years between 1955 and 1959?

MR. MOUNT: I will stipulate except for the color, the blue one is marked 1961.

* * * *

[fol. 93] DEFENDANT'S EXHIBIT G

NEGOTIATIONS BULLETIN NO. 14

'PIE IN THE SKY' DEMANDS!!

These are some of the Union's proposals which have been labeled "pie in the sky" by the Company.

1. FOUR (4) WEEKS VACATION

Many industries have improved their vacation plans to include four (4) weeks vacation. The recent settlement at John Deere provides for four (4) weeks vacation after 25 years of service. We don't think we are asking for "pie in the sky".

2. MASTER CONTRACT

In arguing against a Master Contract, the Company uses the argument that each of their plants build a different product, therefore, a Master Contract is unworkable.

At the West Allis Works, we build everything from tractors to huge steam turbines, yet we have only ONE "master" contract covering all of our members. Sounds like more "A-C Double Talk".

3. SKILLED TRADES PROGRAM

Your Union wants recognition for our skilled tradesmen. The maintenance and protection of our skilled classifications is needed to protect our apprentice program. This is the only way to insure the apprentice that his four (4) years of training are not wasted.

TEST YOUR SENIORITY I. Q.

Did you test yourself on the Company's quiz regarding application of seniority? Chances are you registered a big, fat ZERO!!

The Company brags about how concerned they are about your seniority. Why did they lay off Foundry people, OUT OF LINE OF SENIORITY, under the guise of an "emergency"? An "emergency" which developed after months of stock-piling by the Company!!

RIGHT TO STRIKE

The Company wants a "No Strike" clause. They claim they must have this to protect their customers. Still, they

insist that certain portions of the contract be non-arbitrable. In other words, the Company wants to be "judge and jury". Your Union has proposed that we be given the right to strike on any issue, which cannot be heard before an Impartial Referee. We have to protect OUR MEMBERS!! They are just as important to us as the customers are to the Company.

"GET OUT THE VOTE"

The Company, for some unknown (?) reason, seems a little provoked at Labor's efforts to encourage every registered voter to "Get Out and Vote". We wonder why. Could it be some of their "boys" were defeated in the last election??

IN-PLANT ELECTIONS

The Company maintains that the only way to have a real democratic Union election is to conduct it on Company premises. We have no argument with conducting our elections in the plant—BUT—we want to conduct them under the terms of our Local Union By-Laws and International Constitution. The Company wants them conducted under their terms.

BLANK CHECK STRIKE AUTHORITY

This is a good example of the "Big Lie". The membership of Local 248 did NOT give ANYONE a blank check! The minutes of the August 13th Strike Vote will bear this out. President Morten told the membership, at this meeting, that before strike action was taken the members would be called together to make the decision.

Further—The International Executive Board CANNOT CALL A STRIKE!! They can authorize only. THE LOCAL UNION MEMBERSHIP will be given the opportunity to make the final decision.

NOTE: There have been no negotiating sessions since Friday, October 31, 1956.

LOCAL 248, UAW-AFL-CIO

11-20-56

[fol. 94] ATTACHMENT # 25

LOCAL 248—UAW

8111 West Greenfield Avenue
West Allis 14, Wisconsin

May 8, 1963

Judge Edwin C. Dahlberg has decided in the case of Local 248 vs. Benjamin Natzke that the Union is entitled to recover the $100.00 fine imposed by the Local when Natzke crossed the picket line during the Allis-Chalmers strike.

This case was agreed as being the pilot case to decide the issue whether the union has a right to collect the fine.

We request, therefore, that you make arrangements with the Financial Secretary of Local 248 for payment of the fine of $100.00 previously imposed upon you.

Your failure to do so will only involve additional expense to you.

We expect you to come into the office of the Union to make these arrangements immediately.

Very truly yours,

/s/ Frank Starich
FRANK STARICH,
Rec. Sec'y.
LOCAL 248, UAW-AFL-CIO

FS:mlk
oeiu9

[fol. 95] ATTACHMENT # 30(c)

COPY OF CHARGES.

I am officially preferring charges against Vernon Johnston for conduct unbecoming a union member when he crossed our picket line during our recent strike.

/s/ ADRIAN DRECKTRAH

3/26/62

. to Vernon Johnston

[fol. 96] ATTACHMENT # 31

LOCAL UNION 401

United Automobile—Aircraft—Agricultural Implement Workers of America (UAW)
La Crosse, Wisconsin

[Union Label]

March 27, 1962

Dear Sir:

This is to advise you that you have been charged with a violation of the International Constitution and for conduct unbecoming a Union member by reason of the fact that you have crossed the picket line and gone to work during an officially authorized strike.

A copy of the charges is attached.

A copy of the International Constitution is also enclosed so as to enable you to determine your rights under the Section "Trials of Members" starting on page 72.

Yours truly,

/s/ [Illegible]
Rec. Sec.
Local 401 UAW

Enc.
Att.

[fol. 97] LOCAL UNION 401

United Automobile—Aircraft—Agricultural Implement Workers of America (UAW)
La Crosse, Wisconsin

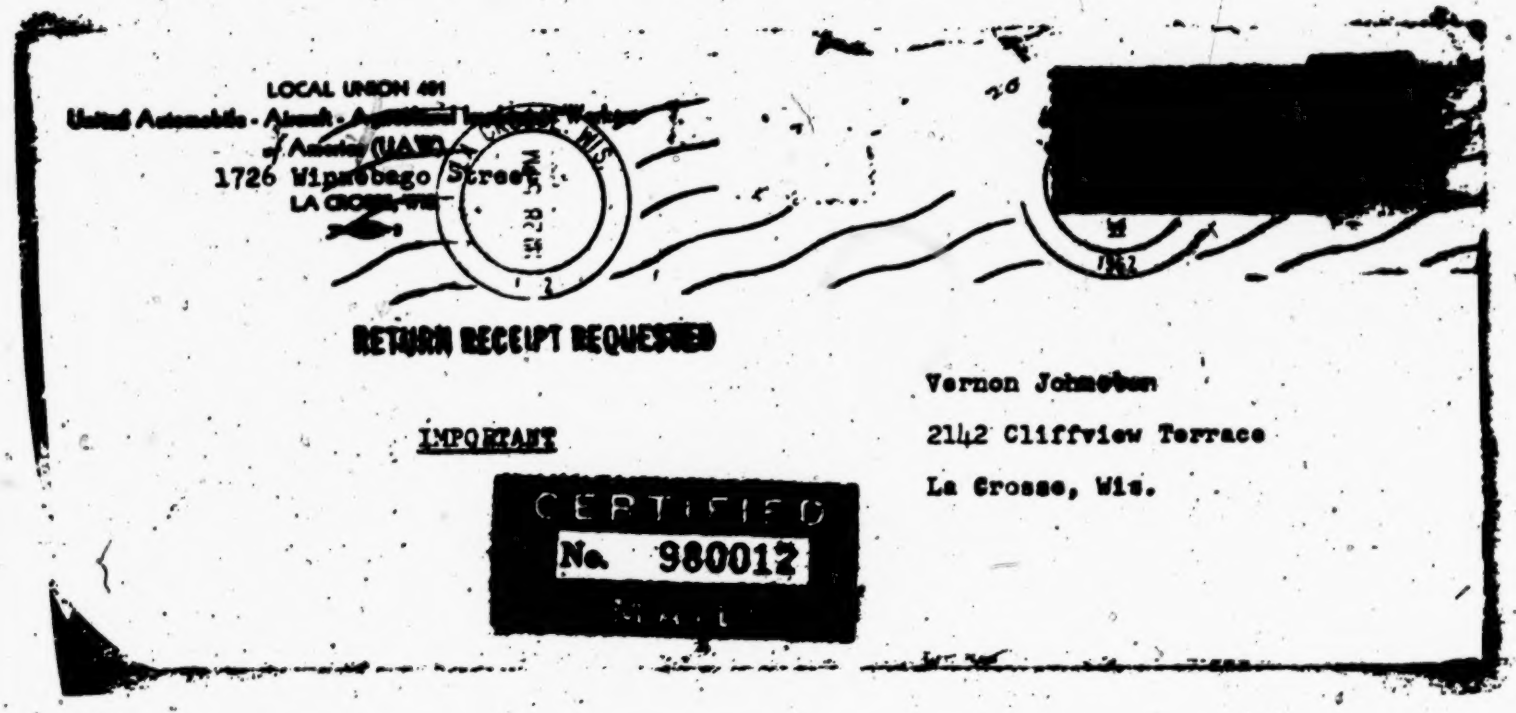
[Union Label]

COPY OF CHARGES.

I am officially preferring charges against Vernon Johnston for conduct unbecoming a union member when he crossed our picket line during our recent strike.

/s/ ADRIAN DRECKTRAH

3/26/62


LOCAL UNION 401
1726 Winnebago Street
LA CROSSE, WIS.
RETURN RECEIPT REQUESTED
IMPORTANT
CERTIFIED
No. 980012
Vernon Johnson
2142 Cliffview Terrace
La Crosse, Wis.

[fol. 99]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1964 APRIL SESSION, 1965

No. 14853

ALLIS-CHALMERS MANUFACTURING COMPANY, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

On Petition for Review of an Order of the
National Labor Relations Board..

OPINION—September 13, 1965

Before KNOCH, CASTLE and KILEY, *Circuit Judges.*

KILEY, *Circuit Judge.* Allis-Chalmers has petitioned this court to review and set aside the National Labor Relations Board's dismissal of a complaint against two locals of the intervening union, International Union, UAW-AFL-CIO (Locals 248 and 401), bargaining agents for certain Allis-Chalmers employees, charging that the union committed unfair labor practices in fining members for crossing picket lines during a strike called by the union. We deny the petition.

The facts are stipulated. The two locals in question are bargaining agents at the employer's West Allis and La-Crosse, Wisconsin plants. The collective bargaining agreements at both plants contain union security clauses which require that employees join the union within thirty days after hiring and "remain members of the Union to the extent of paying dues." Both locals struck the Allis-Chalmers plants, on economic issues, from February 2 to

[fol. 100] approximately April 20, 1959, and again between February 26 and approximately March 5, 1962. During each strike some employee-members of the union crossed the picket lines and worked.

Each strike was called in accordance with the procedures prescribed by the constitution of the International union: a majority agreement to hold a formal strike vote, notification to all members of the vote, approval of the strike by at least a two-thirds majority in secret balloting, followed by approval of the International Executive Board. After each strike formal written charges of violations of the International constitution and by-laws were served on the offending members, followed by formal adversary hearings before union Trial Boards resulting in fines ranging from $20.00 to $100.00.[1]

Some of the members have paid the fines in whole or in part, but others have refused to pay. The union has attempted to collect the fines but has made no effort to have members who refuse to pay them discharged, nor to affect their employment status in any way. No members have been expelled or suspended from the union, nor have any resigned, for any reason arising from the disciplinary proceedings. In a test suit brought against one member who refused to pay a fine, one of the locals recovered a judgment in the County Court of Milwaukee County, Wisconsin, which was affirmed on appeal to the Circuit Court of Milwaukee County, and, this court is informed, is now under advisement by the Wisconsin Supreme Court.

The issue before us is whether a union which imposes fines upon its members for crossing a picket line of the union and seeks to secure payment of the fines by suing or by threat of suit is guilty of violating the prohibition, in Section 8(b)(1)(A) of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C. § 141, *et seq.*, against union action restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act. Underlying the issue is the broader problem of the impact

[1] One hundred dollars is the maximum fine permissible under the union constitution. Since each crossing of the picket lines was treated as a separate offense, the fines in some cases could have been considerably greater than those actually imposed.

of Section 8(b)(1)(A) of the 1947 Taft-Hartley amendments upon union discipline of members.

[fol. 101] For the purpose of confining the issue we point out that the parties do not dispute that generally employees have the right not to strike; that the union may expel its members for any reason authorized by its rules; and that the union may not demand, nor may an employer accede to the demand, that an employee-member be discharged, prevented from promotion, or have his employment status otherwise adversely affected, except for nonpayment of uniform initiation fees and dues.

The Act in Section 7[2] guarantees to an employee the right to engage in concerted activities "for the purpose of collective bargaining or other mutual aid or protection" and to refrain from such activities. Section 8(b)(1)(A) of the Act, 61 Stat. 141, 29 U.S.C. § 158(b)(1)(A), provides that

> (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . . .

Allis-Chalmers contends that a union member who crosses a picket line of his own union is exercising his Section 7 right to refrain from engaging in a concerted activity and that if the union disciplines the member for engaging in this activity by any means other than expulsion from the union, it violates Section 8(b)(1)(A). This

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[2] 61 Stat. 140, 29 U.S.C. § 157.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership as a condition of employment as authorized in section 8(a)(3).

contention rests upon a literal reading of Section 7. But a literal reading fails to take into account the history and purpose of the Section, which shows that it was not intended to immunize a union member from discipline for defiance of a decision of the majority to strike.

[fol. 102] There is no merit in the contention, because Congress did not intend in Section 7 to protect everything which might be described as "concerted activities." As an example, the House Committee Report on H.R. 3020, the House version of the bill, pointed out that the courts and the Board had already held that wildcat and sitdown strikes were not protected activities and that the bill would make no change in those rules;[3] and the Conference Report on the House and Senate bills states that Section 7 was limited to "protected activities," even though some unprotected activities may be "concerted" and within the literal meaning of the Section.[4]

Prior to the 1947 Taft-Hartley amendments no federal legislation in any way regulated union internal affairs or activities. Neither the original proposals of the House or Senate specifically prohibited a union from fining its members for "strikebreaking", although the original House version provided a number of restrictions on unions in their dealings with members.[5] These provisions do not appear in the bill as enacted.

When Congress was considering the 1947 amendments, it was well aware of union disciplinary measures, including fines, for such activities as "strikebreaking". If Congress had intended to prohibit such fines—while at the same time permitting expulsion as a disciplinary measure—the intention to do so could be expected to be clear. See *International Ass'n of Machinists* v. *Gonzales*, 356 U.S. 617, 620 (1958). The indications, however, are to the contrary.[6]

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[3] L.H. 318-19. (References to "L.H." are to the Legislative History of the Labor Management Relations Act, 1947, published by the National Labor Relations Board (1948)).

[4] L.H. 542-43.

[5] L.H. 52-56.

[6] L.H. 1097, 93 Cong. Rec. 4318 (1947) (remarks of Senator Taft):

The legislative history of Section 8(b)(1)(A) shows also that the prohibition of that Section, with or without [fol. 103] the proviso, was directed against the specific evils of force, violence, and threats thereof, mass picketing, and economic reprisals in the form of inducing an employer to discriminate against an employee in his job rights. It was not intended to have the breadth contended for by Allis-Chalmers and to encompass any activity, including fines collectible by legal process, which may be described as "coercive."

Section 12 of the version of the bill passed by the House defined a number of "unlawful concerted activities" by unions which could be enjoined or be the basis of a suit for damages. This provision was not enacted in the final version which became law. The Conference Committee Report[7] explains that Section 8(b)(1)(A) was intended to cover the activities specified in Section 12(a)(1)[8] of the House bill. That Section made no mention of fines as discipline for "strikebreaking."

House Report No. 245 on the House bill as reported by the Committee also made no reference to fines for "strikebreaking" in a listing of results to be achieved by the bill. It states, rather, that "It [the bill] outlaws mass picketing and other forms of violence designed to prevent individuals from entering or leaving a place of employ-

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Footnote 6 continued

"The pending measure does not propose any limitation with respect to the internal affairs of unions. They still will be able to fire any members they wish to fire, and they still will be able to try any of their members. All that they will not be able to do, after the enactment of this bill, is this: If they fire a member for some reason other than nonpayment of dues they cannot make his employer discharge him from his job and throw him out of work. That is the only result of the provision under discussion."

[7] L.H. 546.

[8] L.H. 204.

"Sec. 12. (a) The following activities, when affecting commerce, shall be unlawful concerted activities:

"(1) By the use of force or violence or threats thereof, preventing or attempting to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment of,

ment."[9] In the same report the Committee said, in explaining Section 8(b)(1):

> This is new, making it an unfair labor practice for labor organizations, their officers, agents, and representatives, or for employees, to interfere with, restrain or coerce employees. There is included in this provision a qualification which is not found in the corresponding paragraph covering employers—name-
> [fol. 104] ly, that the interference proscribed is interference by intimidation.[10]

The language of the Section referred to was:

> (1) by intimidating practices, to interfere with the exercise by employees of rights guaranteed in Section 7(a) or to compel or seek to compel any individual to become or remain a member of any labor organization.[11]

The Supreme Court in *NLRB* v. *Drivers, Chauffeurs, Helpers, Local Union No. 639, Int. Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Curtis Bros.)*, 362 U.S. 274, 286-87 (1960), stated that the Congressional debate shows that the purpose of Section 8(b)(1)(A) is "the elimination of the use of repressive tactics bordering on violence or involving particularized threats of economic reprisal" and that "the note repeatedly sounded is as to the necessity for protecting individual workers from union organizational tactics tinged with violence, duress or reprisal." A fine collectible by legal process hardly comports with the notion of "reprisal" or "intimidation." The "economic reprisal" re-

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or from accepting or refusing employment by any employer; or by the use of force, violence, physical obstruction, or threats thereof, preventing or attempting to prevent any individual from freely going from any place and entering upon an employer's premises, or from freely leaving an employer's premises and going to any other place. . . ."

[9] L.H. 297.

[10] L.H. 321.

[11] L.H. 178-79. This was § 8(b)(1) of H.R. 3020, as it passed the House.

ferred to is such things as securing discharge or reductions in pay or seniority.

The Board also has reached this conclusion with respect to the history of Section 8(b)(1)(A) in holding, in *Local 283, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO (Wisconsin Motors Corp.)*, 145 NLRB 1097 (1964), that fines imposed on members and attempted to be collected in State courts for exceeding production quotas do not constitute restraint or coercion within the meaning of that Section. And in *Minneapolis Star and Tribune Co.*, 109 NLRB 727 (1954) the Board held that a $500 fine for failure to attend union meetings and picket during a strike did not violate Section 8(b)(1)(A). The Board said there that a fine may be coercive but it is not what Congress meant by "coercion."

There are other considerations adding rational support for our conclusion. A union member may express agree-[fol. 105] ment or disagreement with union rules or policies, but he cannot simultaneously be a member and also have whatever advantages there might be in non-membership, and he should not be immunized against discipline if as a member he acts against a lawful union activity determined by the majority to be in his, as well as their, interest. "The power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent. . . ." Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049 (1951).

A union is a form of industrial government and the rights and duties of a member are similar to those of a citizen in a democratic society. Summers, p. 1074. The nature of this relationship was recognized by Congress in enacting Section 101(a)(2), 73 Stat. 522, 29 U.S.C. § 411(a)(2), of the LMRDA in 1959. In this section of the "bill of rights" of union members, after providing that members shall have the right to meet together and express their views on matters concerning the organization, Congress added the proviso,

> That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and

to his refraining from conduct that would interfere with its performance of its legal and contractual obligations.

Congress would have been inconsistent in adopting this proviso if it had previously, in Section 8(b)(1)(A), forbidden unions to fine members who cross picket lines, for what greater responsibility could a union member have to the union as an institution than to support a lawful strike called by the majority?

Allis-Chalmers' admission of the union's right under the Act to expel members for "strikebreaking" and its challenge of the lesser disciplinary power to fine is inconsistent. If it were true that a union's disciplinary power is limited to expulsion, this would mean that a union would be faced with the dilemma of either permitting anarchy and dissension within its ranks or depleting its strength by expulsion of the offending members. We have not been persuaded by Allis-Chalmers that this absurdity was in the contemplation of Congress.

[fol. 106] The employer argues that a fine is not a lesser penalty, but is more coercive than expulsion, since many members would not object to, and might even welcome, expulsion. In many cases, however, expulsion could result in serious financial loss through cancellation of union insurance, pension and other benefits. It would be strange for Congress to prohibit one form of discipline and not the other, where the effect of the one permitted could be equal to, or greater, in severity than the one prohibited.

The employees in this case had the right, under Section 7, to strike or not to strike. But once the union voted to strike, the employees who were union members were bound by the limitation that union membership placed on their right not to strike. It would be difficult to accept the proposition that a union should be the one secular society in our nation which one may enter without being bound by majority rule and without submission to some limitations on rights for the common good. Upon entering, union members must take not only the benefits but the burdens also, *NLRB* v. *International Union UAW-AFL-CIO*, 320 F.2d 12, 16 (1st Cir. 1963), and these burdens are not solely financial. Implicit in the Section 7 right to organize

is the duty, once that right has been exercised, to support the organization. The point is not that an employee, as such, may not refrain from striking, but that a union member may not with impunity flout the will of the majority (in this case a two-thirds majority) expressed in a strike vote.

If the employer's position that a union may not fine "strikebreakers" is correct, then the converse—that a union may not fine wildcat strikers—would also be true. This would render a union virtually powerless to enforce a no-strike clause on its members. The last portion of the proviso to Section 101(a)(2) of the LMRDA quoted above, however, clearly protects the rights of a union reasonably to discipline members who violate contract clauses. We do not think Congress intended to treat "strikebreakers" differently from wildcat strikers, so far as union discipline is concerned.

We disagree with the employer that this court's decision in *Allen Bradley Co.* v. *NLRB*, 286 F.2d 442 (7th Cir. 1961), controls our disposition of the issue in this case. [fol. 107] There this court held that proposals of the employer to limit the union's right to fine or discipline members refusing to join in a strike were subjects of mandatory bargaining. In dictum the court said that fines for crossing picket lines impose a sanction on the exercise of the right to work guaranteed by the Act and thus do not relate solely to the internal affairs of the union, so that the proviso of Section 8(b)(1)(A) was inapplicable to protect the union. We do not see how, if fining a union member for crossing a picket line is unlawful coercion, as Allis-Chalmers claims here, it can be a matter for collective bargaining. Nor can we see how, if the employer is "concerned" with a union's fining its members for crossing picket lines, so as to give the employer a bargainable interest in the matter—one of the principal bases of the *Allen Bradley* decision—it can be less "concerned" over the expulsion of members, which the employer here concedes is lawful.

The Board's decision in *Local 138, International Union of Operating Engineers, AFL-CIO*, 148 NLRB No. 74, holding it an unfair labor practice for a union to fine a

member for filing an unfair labor practice charge against the union, also does not militate against our position. That case was based on the principle that a union rule which seeks to frustrate the right of members to avail themselves of the services of the Board is contrary to recognized public policies and beyond the competence of a union to enforce by any coercive means.

We conclude that the Board's decision is not erroneous. The petition for review is accordingly denied.

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[fol. 108] OPINION BY JUDGE KILEY

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

* * * *

Before

Hon. WIN G. KNOCH, Circuit Judge
Hon. LATHAM CASTLE, Circuit Judge
Hon. ROGER J. KILEY, Circuit Judge

No. 14853

ALLIS-CHALMERS MANUFACTURING COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

Petition for review of an order of the National Labor Relations Board.

JUDGMENT—September 13, 1965

This cause came on to be heard on the petition for review of an order of the National Labor Relations Board and the record from the National Labor Relationsm and was argued by counsel.

On consideration whereof, it is ordered by this Court that the said petition for review of an order entered by the National Labor Relations Board on October 23, 1964, be denied, in accordance with the opinion of this Court filed this day. Upon presentation, an appropriate decree will be issued.

[fol. 109]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

* * * *

Before

Hon. JOHN S. HASTINGS, Chief Judge
Hon. F. RYAN DUFFY, Circuit Judge
Hon. ELMER J. SCHNACKENBERG, Circuit Judge
Hon. WIN G. KNOCH, Circuit Judge
Hon. LATHAM CASTLE, Circuit Judge
Hon. ROGER J. KILEY, Circuit Judge
Hon. LUTHER M. SWYGERT, Circuit Judge

[Title Omitted]

ORDER GRANTING THE PETITION FOR REHEARING EN BANC
—October 14, 1965

IT IS ORDERED by the Court that the petition for a rehearing en banc of this cause be, and the same is hereby, granted.

Kiley, C. J. voted to deny the petition.

[fol. 110]

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1965—JANUARY SESSION, 1966

No. 14853

ALLIS-CHALMERS MANUFACTURING COMPANY, PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

On Petition for Review of an Order of the National Labor Relations Board.

OPINION—March 11, 1966

Before HASTINGS, *Chief Judge*, and DUFFY, SCHNACKENBERG, KNOCH, CASTLE, KILEY and SWYGERT, *Circuit Judges*.

KNOCH, *Circuit Judge*. Allis-Chalmers Manufacturing Company, petitioner, sought to review and set aside the action of the National Labor Relations Board, respondent, in dismissing Allis-Chalmers' complaint against Locals 248 and 401 of International Union, UAW-AFL-CIO, who are bargaining agents for certain Allis Chalmers' employees. The Union was charged with unfair labor practices in fining members who had crossed picket lines during two different strikes. The original opinion of this Court which issued September 13, 1965, denied Allis-Chalmers' petition for review.*

* A set out in our original opinion:

The facts are stipulated. The two locals in question are bargaining agents at the employer's West Allis and LaCrosse, Winconsin plants. The collective bargaining agreements at both plants contain union security clauses which require that employees join the union within thirty days after hiring and "remain members of the Union to the extent of paying dues." Both locals struck the Allis-Chalmers plants, on economic issues, from February 2 to approximately April 20, 1959, and again be-

[fol.111] We granted petition for rehearing en banc in this case for a number of reasons, including the following:

(a) the national significance of our decision to management and labor alike, as well as to other courts dealing with kindred or related matters;

(b) an asserted conflict with our prior ruling in *Allen Bradley Company* v. *N.L.R.B.*, 1961, 286 F. 2d 442;

(c) an opportunity for a critical re-evaluation of their respective positions by members of the original panel;

(d) our natural desire to maintain the historical liberty of the American workingman to remain free to work without coercion from employers *or* from unions; and to

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*(Continued)

tween February 26 and approximately March 5, 1962. During each strike some employee-members of the union crossed the picket lines and worked.

Each strike was called in accordance with the procedures prescribed by the constitution of the International union: a majority agreement to hold a formal strike vote, notification to all members of the vote, approval of the strike by at least a two-thirds majority in secret balloting, followed by approval of the International Executive Board. After each strike formal written charges of violations of the International constitution and by-laws were served on the offending members, followed by formal adversary hearings before union Trial Boards resulting in fines ranging from $20.00 to $100.00.[1]

[1] One hundred dollars is the maximum fine permissible under the union constitution. Since each crossing of the picket lines was treated as a separate offense, the fines in some cases could have been considerably greater than those actually imposed.

Some of the members have paid the fines in whole or in part, but other have refused to pay. The union has attempted to collect the fines but has made no effort to have members who refuse to pay them discharged, nor to affect their employment status in any way. No members have been expelled or suspended from the union, nor have any resigned, for any reason arising from the disciplinary proceedings. In a test suit brought against one member who refused to pay a fine, one of the locals recovered a judgment in the County Court of Milwaukee County, Wisconsin, which was affirmed on appeal to the Circuit Court of Milwaukee County, and, this court is informed, is now under advisement by the Wisconsin Supreme Court.

preserve the traditional character of American labor organizations which, largely through voluntary association, have contributed toward raising the living standards of our working people in this country to the highest plane known anywhere in the world.

[fol. 112] As set out in our original opinion:

> The issue before us is whether a union which imposes fines upon its members for crossing a picket line of the union and seeks to secure payment of the fines by suing or by threat of suit is guilty of violating the prohibition, in Section 8(b)(1)(A) of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C. § 141, *et seq.*, against union action restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

The maximum fine permitted under the Union constitution was $100 with each crossing of the picket lines treated as a separate offense. Consecutive fines may run into thousands of dollars creating a far greater burden on the working man than expulsion from his labor organization or even loss of job.

Section 7 of the Labor-Management Relations Act, 29 U.S.C. § 157, provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

The parties agreed that generally employees have the right not to strike and that the Union may expel its members for any reason authorized by its rules, but that the Union may not demand the discharge of an employee or other adverse change of his employment status except for non-payment of uniform initiation fees and dues.

Section 8 of the Act, 29 U.S.C. § 158, provides:

(b) It shall be an unfair labor practice for a labor organization or its agents—

[fol 113] (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section [7] of this title; *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *

Allis-Chalmers contended that union members who cross their own union picket lines are exercising their rights under § 7 to refrain from engaging in a particular concerted activity, and that union discipline for such activity violates § 8(b)(1)(A) if it takes any form other than expulsion from the union. This contention, of course, rests on a literal reading of § 7.

In our original opinion, we mistakenly took the position that such a literal reading was unwarranted in the light of the history and purposes of the section.

We relied on certain aspects of the legislative history, as, for example, committee reports indicating that wildcat and sitdown strikes, although "concerted" activities, were not included in the activitites protected by § 7; and the fact that the original proposals of the House and Senate (prior to the 1947 Taft-Hartley amendments) which did include a number of restrictions on union-membership dealings, nevertheless did not specifically prohibit union fines for strike-breaking, although Congress must have been aware of union disciplinary practices and did specifically make provision permitting disciplinary expulsion. Reference was also made to Senator Taft's remarks that the pending measure did not propose any limitation with respect to the internal affairs of unions. However, he did go on to speak only of discipline by expulsion and to say that the only result of the provision under discussion was that a union "firing" a member for some reason other than non-payment of dues could not force the member's employer to discharge him. It now appears that he had reference to § 8(a)(3); as when he was clearly speaking of § 8(b)(1)(A) he said that the

union could conduct any form of propaganda it chose to persuade but could not by threat of economic reprisal prevent its members from exercising their right to work [fol. 114] and that, as he saw it, was the effect of the amendment, which was adopted shortly after these remarks.

We also laid emphasis on Congressional concern with the use or threat of use of various forms of violent coercion and the elimination of "repressive tactics bordering on violence or involving particularized threats of economic reprisal" as quoted from the opinion in *N.L.R.B.* v. *Drivers, Chauffeurs, Helpers, Local Union No. 639, Int. Bro. Teamsters, etc.* (Curtis Bros.) 362 U.S. 274, 286-7 (1960) and concluded incorrectly, we now believe, that economic reprisal meant only such things as securing discharge or reductions in pay or seniority but not imposition of fines.

In formulating our original opinion, we gave favorable consideration to the following arguments:

1. A member ought not to enjoy all the benefits of union membership while relinquishing none of the advantages of non-union membership.

2. Congress would have been guilty of inconsistency in adopting 29 U.S.C.A. 411(a)(2) which allows unions to enforce reasonable rules as to the responsibility of members with respect to refraining from conduct that interfered with the union's legal and contractual obligations, if Congress were also prohibiting imposition of fines for members who crossed picket lines.

3. If a union's disciplinary powers are limited to expulsion, a union must choose between permitting anarchy in its ranks or depleting its strength, and Congress could not have intended to present unions with so invidious a choice.

4. A fine may be a lesser penalty than expulsion with attendant loss of union insurance and other benefits, and Congress would not have allowed the more severe while withholding the less serious form of punishment.

5. If a union may not fine strikebreakers, then it cannot fine wildcat strikers and cannot enforce a "no strike" clause in its contract.

6. An analogy was drawn between an industrial union and a democratic society where the majority vote rules, [fol. 115] forgetting that a union is largely the creature of statute, that it differs in many ways from other secular societies freely joined and equally freely abandoned by individuals who disagree with the majority, and who are free to withdraw their moral and financial support at any time.

7. Our statement in *Allen Bradley Co.* v. *N.L.R.B.*, 1961, 286 F. 2d 442, that fines for crossing picket lines imposed a sanction on the exercise of the right to work guaranteed by the Act was mere dictum, as in that case, we held a proposal to limits unions' rights to fine or discipline its members for crossing picket lines was a subject of mandatory bargaining. It was suggested that it was somehow inconsistent to require bargaining with respect to a prohibited activity.

On rehearing, fortified with the additional arguments of counsel, and after discussion with all members of our Court, we conclude that the foregoing reasons set out in support of our prior opinion lack validity.

The statutes in question present no ambiguities whatsoever, and therefore do not require recourse to legislative history for clarification. The wording used evolved out of extensive Congressional debate and study. Although in our original opinion we rejected a literal reading of the statutes, in effect, we conceded that such a literal reading would require reversal of the Board's Order.

As interpreted in our original opinion these statutes would protect a union member from his union's coercive threats to take away his wages by securing his discharge from employment, but would not protect him from his union's coercive threats to take away his wages by imposition of fines. A substantial fine such as permitted here may easily pose a greater threat to a member than simple expulson from the union.

Congress has determined what rights the employee may retain while availing himself of the benefits of union membership. All the protections which Congress has seen fit to throw about the union member operate to diminish the authority and power of the union to police its members

by coercion and to that degree impose on the union the burden of achieving its ends by persuasion, rather than by penal exaction.

[fol. 116] Recent history has demonstrated the extreme and far reaching effect of the irresponsible exercise of power and the resulting confusion and loss wreaked on labor, management, and the general public. On the other hand, we, as do all right-thinking citizens, hold those labor leaders in highest respect and esteem, whose authority is based on voluntary association rather than coercion, and who, fortified with the weapons Congress has deemed advisable, carry out their legitimate activities on behalf of their members. Such labor leaders have created a beneficient climate in which labor, management, and the general public may thrive without peril to that priceless American heritage; namely, the right of freedom to work and to organize on a voluntary basis.

We should never forget, nor should we let our fellow citizens forget, that in the all-inclusive, authoritarian state, represented as our common enemy today, the individual rights of the worker and the collective rights of organized workers have been completely appropriated. The state produces but one by-product and that is absolute and abject slavery. Thus ends the right to strike for increased wages or better working conditions. There is no redress of grievances, no individual management of business to create a strong economy for the commonweal. Each and every person does exactly what he is told to do, nothing more and nothing less. It is more important for the individual laboring man to be free and for his labor organization to be free than for any other segment of our society. Our greatness in the past, in the present, and, we prophesy, in the future, stems from those who toil.

The expressed Congressional policy of protecting the union member is particularly apt where, as in the case before us, membership is the result not of individual voluntary choice but of the insertion of a union security provision in the contract under which a substantial minority of the employees may have been forced into membership. Such membership properly incurs an obligation to pay dues and fees but may not be extended to include liability to submit to fines for indulging in a protected

activity. *Radio Officers* v. *N.L.R.B.*, 347 U.S. 17 (1954). [fol. 117] A union concerned about preventing wildcat strikes or other illegal activities may be reassured by the fact that such practices are not protected activities. Employer disciplinary action will adequately assist a union faced with recalcitrant members who defy a "no strike" provision in a contract. It is not neccessary to whittle down the protections provided for all employees by § 7.

Our original decision in this case does conflict with our ruling in *Allen Bradley*. The quoted statement was not mere dictum. Because fines for crossing picket lines did not relate to the internal affairs of the union but seriously affected the rights of both the employees and the employer, we held the authority to fine was a subject for bargaining. Activity already prohibited by statute is not by virtue of that fact alone barred from further prohibition by a provision in a contract. See Reed & Prince Mfg. Co., 96 NLRB 850, 855, where the Board said "We cannot conceive of a good faith basis for a refusal to incorporate a statutory obligation into a contract in the very words of the statute."

If the Congress did not mean to say what Congress has so clearly said, then Congress itself must indicate that fact by legislative enactment. This Court should not attempt to change the plain wording of this statute by judicial interpretation.

Study of the Taft-Hartley legislative history as a whole reveals a clear Congressional intent to balance the national labor policy by placing limitations on coercive union conduct similar to those previously prescribed for employers.

Having carefully reviewed our prior opinion in this case by a rehearing en banc, we now withdraw and reverse it. The action of the Board in dismissing the complaints of petitioner is reversed, and this matter is remanded to the Board for further proceedings not inconsistent with the tenor of this opinion.

REVERSED AND REMANDED.

[fol. 118]

HASTINGS, CHIEF JUDGE, DISSENTING.

On September 13, 1965, a division of this court unanimously rendered a judgment and filed an opinion denying the petition of Allis-Chalmers Manufacturing Company to review and set aside an order of the National Labor Relations Board. The Board order under consideration dismissed complaints charging the Union [1] with unfair labor practices based on charges filed by Allis-Chalmers.

Subsequently, our court, by a vote of 6-1, granted the petition of Allis-Chalmers for a rehearing *en banc* with respect to its judgment entered September 13, 1965. I joined in the action to grant a rehearing *en banc* for the reason that two members of the division which heard the case originally voted for the rehearing *en banc*, and because of the importance of the question involved in this review.

On such rehearing *en banc*, a majority of our court decided to withdraw the prior opinion and judgment of the division which heard the original review and reached a contrary result.

In short, the majority holds that a union which imposes fines upon its members for crossing a picket line of the union and seeks to secure payment of the fines by suit or by threat of suit is guilty of violating the prohibition, in Section 8(b)(1)(A) [2] of the National Labor Relations Act, as amended, 61 Stat. 136, 29 U.S.C.A. § 141, *et seq.*, against union action restraining or coercing employees in the exercise of rights guaranteed by Section 7 [3] of the Act.

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[1] Locals 248 and 401 of International Union, UAW-AFL-CIO.

[2] "It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein * * *" 29 U.S.C.A. § 158.

[3] "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through

[fol. 119] The effect of this holding is to say that the employees of Allis-Chalmers have a statutory right to belong to the Union on their own terms; to deny the Union the right to regulate its internal affairs; to rule that the disciplinary action taken by the Union infringes upon the rights of the dissident members protected by Section 7 of the Act; and to rule that such disciplinary action by the Union constitutes restraint or coercion within the meaning of Section 8(b)(1) of the Act.

I feel compelled to dissent from the result reached by the learned majority in this rehearing *en banc*.

I cannot agree that the Union action in this case violates Section 7 of the Act.

In substance, Section 7 grants to an *employee* the right of self-organization for collective bargaining purposes and to refrain from concerted activities, including an economic strike. It does not necessarily follow that *an employee who is a union member* may claim the same right of self-organization for collective bargaining purposes and at the same time claim the right to belong to the labor organization on his own terms. I cannot believe the Congress intended any such result.

I shall not belabor the legislative history of the Act, except to say that it is perfectly clear to me that *employees* are granted the right to belong to a union or not to belong to a union. If the employees elect to belong to a union and through such membership engage in concerted activities (an economic strike in this instance) for the purpose of collective bargaining, I find no prohibition in Section 7 to prevent a union from disciplining those members who decline to honor an authorized strike.

It has never been disputed that a union may discipline its members for engaging in an unauthorized strike. I fail to see any congressional purpose to distinguish between wildcat strikers and strikebreakers. The activities

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representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title." 29 U.S.C.A. § 157.

of each are equally abhorrent to the establishment and maintenance of industrial peace through the orderly processes of collective bargaining.

In this case, membership in the Union is voluntary and not compulsory. The applicable union contracts with Allis-[fol. 120] Chalmers incorporate union security clauses. These do not compel union membership as such but only require an employee to become and remain "a member of the Union to the extent of paying his monthly dues * * *." This limitation on union security clauses was declared by our court in *Union Starch & Refining Co.* v. *National Labor Rel. Bd.*, 7 Cir., 186 F. 2d 1008 (1951), cert. den., 342 U.S. 815 (1951), and remains unimpaired today.

Here, the strikebreaking employees had a choice. They could reject full union membership and merely pay their monthly dues, and thus remain outside and beyond the reach of union discipline. They chose, however, to associate themselves with others in full union membership. Thereby, they elected to receive all the benefits of full membership through the medium of collective bargaining. It necessarily follows that they incurred an ensuing obligation of union solidarity with respect to concerted work refusal. A member's obligations to his union as the reciprocal counterpart of his rights within the organization has been the subject of much writing[4] and need not be further extended here. See *Parks* v. *International Brotherhood of Electrical Wkrs.*, 4 Cir., 314 F. 2d 886 (1963), cert. den., 372 U.S. 976 (1963).

Section 7 of the Act safeguards an employee's right to strike and his right to refrain from striking. However, such rights are far from absolute rights. The Supreme Court has held that the right to strike falls in the face of a union's consent to a "no strike" clause in its labor agreement. *Labor Board* v. *Sands Mfg. Co.*, 306 U.S. 332 (1939). An employee union member may not exercise his right to strike contrary to an internal union regulation prohibiting membership strikes unauthorized by the union.

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[4] Cox, *Internal Affairs of Labor Unions*, 58 Mich. L. Rev. 819 (1960); Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049 (1951); Gregory, *Labor and the Law* p. 106.

Parks v. *International Brotherhood of Electrical Wkrs., supra.* The Supreme Court recently held that an employer's right to "the use of a temporary layoff of empolyees [lockout] solely as a means to bring economic pressure to bear in support of the employer's bargaining position, after an impasse has been reached" is not "in any way [fol. 121] inconsistent with the right to bargain collectively or with the right to strike" as granted by Section 7 of the Act. *American Ship Bldg.* v. *Labor Board,* 380 U.S. 300, 308, 310 (1965).

The underlying statutory authority of bargaining representatives to represent all the members of an appropriate unit is derived from Sections 7 and 9(a)[5] of the Act and it must be allowed a "wide range of reasonableness" in serving the unit it represents without expecting to satisfy all who are represented. *Ford Motor Co.* v. *Huffman,* 345 U. S. 330, 338 (1953).

The First Circuit in *N.L.R.B.* v. *International Union, United A., A. & A. I. Wkrs.,* 320 F. 2d 12 (1963), considered the amenability of union members to internal union regulations in light of Section 7 and Section 8(b)(1)(A) of the Act. It concluded on pages 15-16:

> "Under Section 7, absent a collective bargaining agreement to the contrary, the employee has indeed the unfettered right to abstain from indulging in union activity. He need not 'form,' 'join' or 'assist' a labor organization and, again, an agreement apart, this inactivity cannot be the source of recriminations. It is by now too clear for citation that this facet of Section 7 was designed to prevent forcing the unwilling worker into a union.
>
> "However, we believe that it is quite another thing when the employee eschews his 'reluctance' and voluntarily joins a labor organization. At this point, under our view, the employee takes off the protective mantle

[5] "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *." 29 U.S.C.A. § 159(a).

of Section 7's 'refraining' provision and renders himself amenable to the reasonable internal regulations of the organization with which he chooses to cast his lot. * * *.

"* * *. It is true that under Section 7 of the Act, and in the light of the limited security agreement which obtained between the Company and the Union [fol. 122] in the instant case, the subject employees need not have joined the Union. However, once they voluntarily took that step, they embraced not only the benefits but also the burdens which flowed from their union membership. One of those 'burdens' was the duty of comporting with the Union's reasonable internal regulations; a requirement they failed to discharge here."

I would conclude, therefore, that Congress in the 1947 amendments to the Act, aside from barring a union from attempting to enforce its internal regulations by affecting the members' employment status, refrained from exploring the area of internal union affairs. It did not interfere with nor prohibit the right of the union to discipline its members for the violation of reasonable rules or policies it could legitimately expect its members to observe.

This conclusion is buttressed by the enactment of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C.A. § 401, *et seq.* The proviso added to Section 101(a)(2) reads: "Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

Further, Section 101(a)(5) recognizes the right of a union to discipline by fine, suspension and expulsion and provides certain procedural safeguards for the offending member.

The explicit provisions of this 1959 legislation are in harmony with the rationale I have attributed to the 1947 enactments.

Now, a few words about the strikes involved in this case. The first strike occurred in 1959. Of approximately 7400 bargaining unit employees, 175 union members elected to disregard the strike and work. The union warned the strikebreakers they were subject to a fine of as much as $100 for each day they worked during the strike. The strike continued for 54 working days and the [fol. 123] dissidents remained at work. Subsequently, the offenders were fined, but no fine was more than a total of $100.

The second and third strikes occurred in 1962 and each lasted less than a week. Members who refused to strike and elected to work were fined in amounts up to $100 each.

I can only conclude that the fines instituted by the Union against its dissident members for strikebreaking in this case do not represent the type of restraint or coercion proscribed as an unfair labor practice in Section 8(b)(1)(A) of the Act. My reading of the legislative history, cited authorities and the comprehensive regulatory provisions of the Landrum-Griffin Act of 1959, *supra*, makes clear to me that Congress was not addressing its proscription to intra-union regulation but rather to coercive acts of violence, intimidation or job discrimination.

In *National Labor Rel. Bd.* v. *Amalgamated Local 286, Etc.*, 7 Cir., 222 F. 2d 95, 97-98 (1955), we held that the action of a union in threatening to withhold certain insurance coverage from members because they had refused to pay certain *disciplinary assessments and fines imposed on them by the union* was not a violation of Section 8(b)(1)(A) of the Act, and was in full conformity with the union's right to regulate its internal affairs. See also, *American Newspaper Pub. Ass'n.* v. *National Labor Rel. Bd.*, 7 Cir., 193 F. 2d 782, 800 (1951).

Finally, the majority accepts the view of Allis-Chalmers that the opinion under review here is in conflict with our prior holding in *Allen Bradley Company* v. *N.L.R.B.*, 7 Cir., 286 F. 2d 442, 446 (1961). I do not agree.

The only question for decision in *Allen Bradley* was whether a contract provision under which the union agreed to waive its right to fine its members for exercising their statutory rights was within the area of mandatory bar-

gaining under the Act. The court held that it was, and that the employer did not violate Section 8(a)(5) of the Act by insisting upon such clause in its negotiations with the union. The question here is whether a union violates [fol. 124] Section 8(b)(1)(A) of the Act by imposing such a fine. I see no inconsistency in the holdings in the two cases. Any gratuitous statements in 286 F. 2d at page 446 must be considered as dicta and not controlling here. If they are not to be considered as dicta and are controlling here, this being a rehearing *en banc*, I would reject such statements, but not the decision in *Allen Bradley*.

I finally conclude that the imposition of the fines in question are not only free from proscribed restraint and coercion but are within the protected area of permissible internal union regulation.

In conclusion, to say that this court has bent a sympathetic ear to the frequent claims of employers to be kept secure from restraint or interference in their right to manage their own affairs, as a proper prerogative of management, requires no citation of authorities. I have joined in the recognition of such right claimed by employers.

That same concern for freedom of management to regulate the internal affairs of its own business, in all fairness, dictates my view that unions should have the same freedom of internal control. And, contrary to the insistent claims of Allis-Chalmers, I can only conclude that any other disposition of this case than indicated herein would be contrary to law and would adversely affect the orderly establishment and maintenance of good management-labor relations.

For the foregoing reasons, I would affirm the result reached by the division of this court in its judgment rendered on September 13, 1965.

[fol. 125] No. 14853

KILEY, CIRCUIT JUDGE, DISSENTING

I respectfully dissent. The court's opinion footnotes the facts and abbreviates the points made in support of the original opinion, now withdrawn. I think it prudent to adopt, as part of my dissent, so much of the original opinion* as is necessary to give a full understanding of the points originally made:

* * * *

> Allis-Chalmers contends that a union member who crosses a picket line of his own union is exercising his Section 7 right to refrain from engaging in a concerted activity and that if the union disciplines the member for engaging in this activity by any means other than expulsion from the union, it violates Section 8(b)(1)(A). This contention rests upon a literal reading of Section 7. But a literal reading fails to take into account the history and purpose of the Section, which shows that it was not intended to immunize a union member from discipline for defiance of a decision of the majority to strike.
>
> There is no merit in the contention, because Congress did not intend in Section 7 to protect everything which might be described as "concerted activities." As an example, the House Committee Report on H.R. 3020, the House version of the bill, pointed out that the courts and the Board had already held that wildcat and sitdown strikes were not protected activities and that the bill would make no change in those rules;[1] and the Conference Report on the House and Senate bills states that Section 7 was limited to "protected activities," even though some unprotected activities may be "concerted" and within the literal meaning of the Section.[2]

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* *Allis-Chalmers Mfg. Co.* v. *NLRB*, No. 14853, 7th Cir., Sept. 13, 1965, at 3-9. Footnotes have been renumbered from the "slipsheet" opinion.

[1] L.H. 318-19. (References to "L.H." are to the Legislative History of the Labor Management Relations Act, 1947, published by the National Labor Relations Board (1948)).

[2] L.H. 542-43.

Prior to the 1947 Taft-Hartley amendments no federal legislation in any way regulated union internal affairs or activities. Neither the original proposals of the House or Senate specifically prohibited [fol. 126] a union from fining its members for "strike-breaking," although the original House version provided a number of restrictions on unions in their dealings with members.[3] These provisions do not appear in the bill as enacted.

When Congress was considering the 1947 amendments, it was well aware of union disciplinary measures, including fines, for such activities as "strike-breaking." If Congress had intended to prohibit such fines—while at the same time permitting expulsion as a disciplinary measure—the intention to do so could be expected to be clear. See *International Ass'n of Machinists* v. *Gonzales*, 356 U.S. 617, 620 (1958). The indications, however, are to the contrary.[4]

The legislative history of Section 8(b)(1)(A) shows also that the prohibition of that Section, with or without the proviso, was directed against the specific evils of force, violence, and threats thereof, mass picketing, and economic reprisals in the form of inducing an employer to discriminate against an employee in his job rights. It was not intended to have the breadth contended for by Allis-Chalmers and to encompass any activity, including fines collectible by legal process, which may be described as "coercive."

Section 12 of the version of the bill passed by the House defined a number of "unlawful concerted ac-

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[3] L.H. 52-56.

[4] L.H. 1097, 93 Cong. Rec. 4318 (1947) (remarks of Senator Taft):

"The pending measure does not propose any limitation with respect to the internal affairs of unions. They still will be able to fire any members they wish to fire, and they still will be able to try any of their members. All that they will not be able to do, after the enactment of this bill, is this: If they fire a member for some reason other than nonpayment of dues they cannot make his employer discharge him from his job and throw him out of work. That is the only result of the provision under discussion."

tivities" by unions which could be enjoined or be the basis of a suit for damages. This provision was not enacted in the final version which became law. The Conference Committee Report [5] explains that Section [fol. 127] 8(b)(1)(A) was intended to cover the activities specified in Section 12(a)(1)[6] of the House bill. That Section made no mention of fines as discipline for "strikebreaking."

House Report No. 245 on the House bill as reported by the Committee also made no reference to fines for "strikebreaking" in a listing of results to be achieved by the bill. It states, rather, that "It [the bill] outlaws mass picketing and other forms of violence designed to prevent individuals from entering or leaving a place of employment." [7] In the same report the Committee said, in explaining Section 8(b)(1):

> This is new, making it an unfair labor practice for labor organizations, their officers, agents, and representatives, or for employees, to interfere with, restrain or coerce employees. There is included in this provision a qualification which is not found in the corresponding paragraph covering employers—namely, that the interference proscribed is interference by intimidation.[8]

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[5] L.H. 546.

[6] L.H. 204.

"Sec. 12. (a) The following activities, when affecting commerce, shall be unlawful concerted activities:

"(1) By the use of force or violence or threats thereof, preventing or attempting to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment by, any employer; or by the use of force, violence, physical obstruction, or threats thereof, preventing or attempting to prevent any individual from freely going from any place and entering upon an employer's premises, or from freely leaving an employer's premises and going to any other place. . . ."

[7] L.H. 297.

[8] L.H. 321.

The language of the Section referred to was:

> (1) by intimidating practices, to interfere with the exercise by employees of right guaranteed in Section 7(a) or to compel or seek to compel any individual to become or remain a member of any labor organization.[9]

[fol. 128] The Supreme Court in *NLRB* v. *Drivers, Chauffeurs, Helpers, Local Union No. 639, Int. Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Curtis Bros.)*, 362 U.S. 274, 286-87 (1960), stated that the Congressional debate shows that the purpose of Section 8(b)(1)(A) is "the elimination of the use of repressive tactics bordering on violence or involving particularized threats of economic reprisal" and that "the note repeatedly sounded is as to the necessity for protecting individual workers from union organizational tactics tinged with violence, duress or reprisal." A fine collectible by legal process hardly comports with the notion of "reprisal" or "intimidation." The "economic reprisal" referred to is such things as securing discharge or reductions in pay or seniority.

The Board also has reached this conclusion with respect to the history of Section 8(b)(1)(A) in holding, in *Local 283, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO (Wisconsin Motors Corp.)*, 145 NLRB 1097 (1964), that fines imposed on members and attempted to be collected in State courts for exceeding production quotas do not constitute restraint or coercion within the meaning of that Section. And in *Minneapolis Star and Tribune Co.*, 109 NLRB 727 (1954) the Board held that a $500 fine for failure to attend union meetings and picket during a strike did not violate Section 8(b)(1)(A). The Board said there that a fine may be coercive but it is not what Congress meant by "coercion."

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[9] L.H. 178-79. This was § 8(b)(1) of H.R. 3020, as it passed the House.

There are other considerations adding rational support for our conclusion. A union member may express agreement or disagreement with union rules or policies, but he cannot simultaneously be a member and also have whatever advantages there might be in nonmembership, and he should not be immunized against discipline if as a member he acts against a lawful union activity determined by the majority to be in [fol. 129] his, as well as their, interest. "The power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent. . . ." Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049 (1951)

A union is a form of industrial government and the rights and duties of a member are similar to those of a citizen in a democratic society. Summers, p. 1074. The nature of this relationship was recognized by Congress in enacting Section 101(a)(2), 73 Stat. 522, 29 U.S.C. § 411(a)(2), of the LMRDA in 1959. In this section of the "bill of rights" of union members, after providing that members shall have the right to meet together and express their views on matters concerning the organization, Congress added the proviso

> That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal and contractual obligations.

Congress would have been inconsistent in adopting this proviso if it had previously, in Section 8(b)(1)(A), forbidden unions to fine members who cross picket lines, for what greater responsibility could a union member have to the union as an institution than to support a lawful strike called by the majority?

Allis-Chalmers' admission of the union's right under the Act to expel members for "strikebreaking"

and its challenge of the lesser disciplinary power to fine is inconsistent. If it were true that a union's disciplinary power is limited to expulsion, this would mean that a union would be faced with the dilemma of either permitting anarchy and dissension within its ranks or depleting its strength by expulsion of the [fol. 130] offending members. We have not been persuaded by Allis-Chalmers that this absurdity was in the contemplation of Congress.

The employer argues that a fine is not a lesser penalty, but is more coercive than expulsion, since many members would not object to, and might even welcome, expulsion. In many cases, however, expulsion could result in serious financial loss through cancellation of union insurance, pension and other benefits. It would be strange for Congress to prohibit one form of discipline and not the other, where the effect of the one permitted could be equal to, or greater, in severity than the one prohibited.

The employees in this case had the right, under Section 7, to strike or not to strike. But once the union voted to strike, the employees who were union members were bound by the limitation that union membership placed on their right not to strike. It would be difficult to accept the proposition that a union should be the one secular society in our nation which one may enter without being bound by majority rule and without submission to some limitations on rights for the common good. Upon entering, union members must take not only the benefits but the burdens also, *NLRB* v. *International Union UAW-AFL-CIO*, 320 F.2d 12, 16 (1st Cir. 1963), and these burdens are not solely financial. Implicit in the Section 7 right to organize is the duty, once that right has been exercised, to support the organization. The point is not that an employee, as such, may not refrain from striking, but that a union member may not with impunity flout the will of the majority (in this case a two-thirds majority) expressed in a strike vote.

If the employer's position that a union may not fine "strikebreakers" is correct, then the converse—that a union may not fine wildcat strikers—would also be true. This would render a union virtually powerless to enforce a no-strike clause on its members. The last portion of the proviso to Section 101 [fol. 131] (a) (2) of the LMRDA quoted above, however, clearly protects the rights of a union reasonably to discipline members who violate contract clauses. We do not think Congress intended to treat "strikebreakers" differently from wildcat strikers, so far as union discipline is concerned.

We disagree with the employer that this court's decision in *Allen Bradley Co.* v. *NLRB*, 286 F.2d 442 (7th Cir. 1961), controls our disposition of the issue in this case. There this court held that proposals of the employer to limit the union's right to fine or discipline members refusing to join in a strike were subjects of mandatory bargaining. In dictum the court said that fines for crossing picket lines impose a sanction on the exercise of the right to work guaranteed by the Act and thus do not relate solely to the internal affairs of the union, so that the proviso of Section 8(b)(1)(A) was inapplicable to protect the union. We do not see how, if fining a union member for crossing a picket line is unlawful coercion, as Allis-Chalmers claims here, it can be a matter for collective bargaining. Nor can we see how, if the employer is "concerned" with a union's fining its members for crossing picket lines, so as to give the employer a bargainable interest in the matter—one of the principal bases of the *Allen Bradley* decision—it can be less "concerned" over the expulsion of members, which the employer here concedes is lawful.

The Board's decision in *Local 138, International Union of Operating Engineers, AFL-CIO*, 148 NLRB No. 74, holding it an unfair labor practice for a union to fine a member for filing an unfair labor practice charge against the union, also does not militate against our position. That case was based on

the principle that a union rule which seeks to frustrate the right of members to avail themselves of the services of the Board is contrary to recognized public policies and beyond the competence of a union to enforce by any coercive means.

* * * *

[fol. 132] Both the original and present opinions state the issue identically. I take the present holding of the court to be that "a union which imposes fines upon its members" for crossing a picket line, and seeks to collect the fines by suit or threat of suit, is guilty of an unfair labor practice in violation of § 8(b) (1) (A). On this holding, the original opinion to the contrary was withdrawn.

The original opinion discloses that both parties and the court were concerned only with fines imposed on union members who were subject to the union constitution and rules. This is clear from the original opinion, for example, "no members have been expelled or suspended from the union, nor have any resigned, for any reason arising from the disciplinary proceedings"; also ". . . the parties do not dispute . . . that the union may expel its members for any reason authorized by its rules"; and "Allis-Chalmers contends that a union members who crosses a picket line of his own union is exercising his Section 7 right . . .; and that if the union disciplines the member for . . . this . . . by any means other than expulsion, it violates Sec. 8(b) (1) (A)."

This being so, the court's statement concerning nonvoluntary members[10] might be misleading to the reader. There is no question in the issue before us of "forced . . . membership."

An argument was introduced by Allis-Chalmers in its rehearing petition that the men before us were involuntary members having "solely a dues paying status," a "very limited technical" membership.[11] The union's answer to

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[10] The court states, *supra*, at 7: ". . . where, as in the case before us, membership is the result not of individual voluntary choice but of the insertion of a union security provision in the contract under which a substantial minority of the employees may have been forced into membership."

[11] Petition for Rehearing and For Rehearing En Banc, pp. 17-18.

the petition stated that the union shop clause does not require full union membership; that the union could not compel employees to take the union oath, submitting to the union constitution and rule. The union's answer conceded that *if* the men before us had no obligation to the union beyond paying dues and fees, they would not be subject [fol. 133] to the union "requirement of obedience to the common cause." [12] In reply Allis-Chalmers shifted gears: "This avoids the question in issue. The question is whether a union may coerce an employee who is a member, *be he one voluntarily or involuntarily*. It is the Petitioner's position that unions have no such right." [13] The question of involuntariness was not and is not in the case.

In addition, it seems important to me that a few observations be made about the court's opinion.

The opinion states:

> In formulating our original opinion, we gave favorable consideration to the following arguments:
>
> * * * *
>
> 6. An analogy was drawn between an industrial union and a democratic society where the majority rules, forgetting that a union is largely the creature of statute . . . .

I am sure the court by the term "largely the creature of statute" meant only to say that the Wagner Act and subsequent legislation gave unions status as institutions. Taken literally the words imply that unions, as associations of men, had no rightful prestatute existence. The Constitution presupposes and gives protection to the right of association. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 460 (1958).

The court states "the statutes in question present no ambiguities whatsoever, and therefore do not require recourse to legislative history for clarification." Section 8(b)(1)(A) is not less ambiguous than other parts of

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[12] Intervenor's Memorandum of Response to Petition for Rehearing, pp. 3-5.

[13] Reply Brief for the Petitioner on Rehearing En Banc, p. 12. (Emphasis added.)

Section 8(b), application of which has been troublesome for the Supreme Court. For example, see *NLRB* v. *Drivers Local Union*, 362 U.S. 274 (1960), and especially 362 U.S. at 290, where the Court referred to the term "restrain or coerce" as "non-specific, indeed vague, words. [fol. 134] . . ."[14] And Allis-Chalmers, in its original brief in this case, relied upon legislative history to buttress its contention as to the intent of Congress.

The stipulated facts do not warrant the court's implication that the actual fines imposed in this case took away the union member's "wages." There is no claim in this case that the fines levied were unreasonable. The only issue is with respect to the right to fine these union members for crossing a picket line and to enforce payment in court. And the original opinion cannot be read as insulating from Board or court decision the unreasonable imposition by a union of such fines as would be equivalent to preventing a member from working or blocking his promotion or having him demoted.

The court reassures the union, concerned if it has no right to fine members who are wildcat strikers, by noting that wildcat strikes are not protected activities and that the employer, by disciplinary action, will "adequately assist" the union. This burden would probably not rest lightly on the employer, nor will the reassurance put the union quite at ease about enforcement of no-strike clauses.

It is my view that the original opinion was correct, and I adhere to the views I expressed there. I would deny the petition to set aside the Board's dismissal of the complaint.

I also concur in the views expressed by Chief Judge Hastings and Judge Swygert in their separate dissents.

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[14] The Fifth Circuit, rejecting a district court's distionary interpretation of the word "coerce" in § 8(b)(4), had recourse to legislative history, stating: "We believe that the Congress used 'coerce' in the section under consideration as a word of art. . . ." *Local 48, Sheet Metal Workers* v. *Hardy Corp.*, 332 F.2d 682, 686 (5th Cir. 1964).

[fol. 135] No. 14853.

SWYGERT, CIRCUIT JUDGE, DISSENTING

I concur in both Chief Judge Hastings' dissent and Judge Kiley's dissent. I think, however, that additional comment is necessary to reemphasize what I conceive to be the erroneous premises upon which the majority opinion rests.

I do not disagree with the majority opinion's generalities about the laudable role of labor unions in our recent industrial history and the importance of protecting the American workingman from any suggestion of involuntary servitude. These generalities, however, are irrelevant and do not solve the legal question presented. The relevant points cited by the majority in support of its conclusion, and with which I disagree, are: (1) this case involves employees who are involuntary members of the union; (2) the possibility exists that the union might exact crippling and unreasonable fines; and (3) there is no occasion for resorting to legislative history in the application of sections 7 and 8(b)(1)(A) of the National Labor Relations Act to the facts of this case.

There is no issue in this case concerning compulsory union membership. The issue is whether an employee who has voluntarily applied for and been admitted to full union membership may be subjected to a disciplinary fine for crossing a picket line established by his union. The majority's reliance upon coerced membership is misplaced. Both the Board and the union concede that an employee, even thought required by a union security clause to tender uniform initiation fees and periodic dues in order to hold his job, is not subject to internal union discipline if he has either rejected full union membership or resigned from the union.

There is no issue in this case relating to "consecutive fines [which] may run into thousands of dollars." The facts show that the fines imposed ranged from $20 to $100. This court should not consider hypothetical questions. Reliance upon speculative union conduct and the burdens it might impose upon a recalcitrant member is not justifiable. [fol. 136] Moreover, a members who has been fined and believes that the fine is excessive may contest the fine

either in a state court action brought to collect it or in a federal court action claiming a violation of his rights under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 401-531 (1959).

A literal construction of sections 7 and 8(b)(1)(A) is neither permissible nor dispositive of the issue in this case. It is axiomatic that in interpreting statutes a court must ascertain and give effect to the legislative intent. The words actually chosen are, of course, the strongest measure of the legislative purpose. But words generally have different shades of meaning, and the dominant meaning —the one the legislative body intended—can often be ascertained only by considering the process out of which it evolved. For that reason we should not ignore the legislative history of such significant congressional expressions as sections 7 and 8(b)(1)(A). The briefs and arguments of the parties in this appeal were primarily devoted to the scope of application intended for these provisions by Congress. Refusing to admit that these sections contain words of art whose meaning can only be discerned by consulting their legislative background or failing to recognize that these sections are but amendments to the NLRA and that they should be considered within its contextual framework is inconsistent with proper statutory interpretation. The majority opinion implicitly recognizes this when it refers to the "extensive Congressional debate and study" which assertedly reduced the interpretation of section 8(b)(1)(A) to a simple exercise. The Supreme Court has not found a literal reading of this provision so conclusive. In *NLRB* v. *Drivers' Local Union 639*, 362 U.S. 274 (1960), the Court found it necessary to examine the legislative history of section 8(b)(1)(A) in detail in order to decide whether peaceful picketing by a union is conduct which might "restrain or coerce" employees in the exercise of section 7 rights and therefore falls within the prohibition of section 8(b)(1)(A).

Finally, I am not convinced that a mechanical application of the statutes in question provides an answer to the problem. Employees have the right to engage in concerted activities or to refrain from engaging in such activities. But to read section 7 as saying that an employee who is

also a union member may make an independent, *ad hoc* determination to cross a union-imposed picket line without [fol. 137] subjecting himself to reasonable internal union discipline is to say that an employee-member may simultaneously engage in protected activity and refrain from so engaging. If an employee wishes to be free of internal union discipline, there are no legal barriers against the exercise of such choice. But when an employee voluntarily joins a union (an exercise of his section 7 rights) he may not join on his own terms, abiding only by those rules with which he is in personal agreement.[1] Similarly, to read the proviso in section 8(b)(1)(A) as limiting a union's internal disciplinary power to expulsion of its members seems to me to be not only an undue restriction of the words "retention of membership" but also an application of the proviso in a way not intended and in a manner which diminishes a power which would exist entirely apart from the proviso. Section 8(b)(1)(A) by its terms is directed at union conduct vis-à-vis employees, not at union conduct vis-à-vis union members.

* * * *

[1] In *NLRB* v. *UAW*, 320 F.2d 12, 15 (1st Cir. 1963), the First Circuit commented on the effect of union membership on an employee's section 7 right to refrain from concerted activities in the following manner:

> Under Section 7, absent a collective bargaining agreement to the contrary, the employee has indeed the unfettered right to abstain from indulging in union activity. He need not "form," "join" or "assist" a labor organization and, again, an agreement apart, this inactivity cannot be the source of recriminations. It is by now too clear for citation that this facet of Section 7 was designed to prevent forcing the unwilling worker into a union.
>
> However, we believe that it is quite another thing when the employee eschews his "reluctance" and voluntarily joins a labor organization. At this point, under our view, the employee takes off the protective mantle of Section 7's "refraining" provision and renders himself amenable to the reasonable internal regulations of the organization with which he chooses to cast his lot.

[fol.138]

OPINION BY JUDGE KNOCH

(Dissent opinions by Judges Hastings, Kiley, Swygert)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

* * * *

Before

Hon. JOHN S. HASTINGS, Chief Judge
Hon. F. RYAN DUFFY, Circuit Judge
Hon. ELMER J. SCHNACKENBERG, Circuit Judge
Hon. WIN G. KNOCH, Circuit Judge
Hon. LATHAM CASTLE, Circuit Judge
Hon. ROGER J. KILEY, Circuit Judge
Hon. LUTHER M. SWYGERT, Circuit Judge

No. 14853

ALLIS-CHALMERS MANUFACTURING COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

Petition for review of an order of the National Labor Relations Board.

JUDGMENT—March 11, 1966

This cause came on to be heard on the petition for review of an order of the National Labor Relations Board entered on October 23, 1964, and the record from the National Labor Relations Board and was argued by counsel before the Court sitting *en banc*, pursuant to an order heretofore entered on October 14, 1965, granting petition for rehearing *en banc*.

On consideration whereof, it is hereby ordered by this Court that the opinion of this Court heretofore issued on September 13, 1965, be, and the same is hereby withdrawn, and the order entered thereon be, and the same is hereby vacated.

It is further ordered by the Court that the action of the National Labor Relations Board in dismissing the complaints of the petitioner be, and the same is hereby REVERSED, and that this matter be, and it is hereby REMANDED to the National Labor Relations Board for further proceedings not inconsistent with the tenor of the opinion of this Court filed this day.

[fol. 139]

[Clerk's Certificate to foregoing transcript omitted in printing]

[fol. 140]

SUPREME COURT OF THE UNITED STATES

No. 216, October Term, 1966

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

ALLIS-CHALMERS MANUFACTURING COMPANY, ET AL.

ORDER ALLOWING CERTIORARI—October 10, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is placed on the summary calender.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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